



A

TABLE OF THE SEVERALL

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A Proeme



DEO, PATRIE, TIBI.

Procemium.



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id.

N the two former parts of the Institutes we have principally treated De communibus placitis, and of those two great Pronouns [Meum & Tuum.] In the Third we have handled Placita Corona, and Criminall causes. But because Rerum ordo confunditur, si unicuique jurisdictio non servetur, We in this Fourth and last part of the Institutes are to speak of the Jurisdiction of the Courts of Justice within this Realm.

Jurisdictio est authoritas judicandi sive jus dicendi int' partes de actionibus personarum et rerum secundum quod deducta fuerunt in judicium per amhoritatem ordinariam seu delegatam : And again , b Jurisdictio est potestas de publico introducta cum necessitate juris dicendi. It is derived of

Fas, and ditio, i. potestas juris.

Curia hath two feverall fignifications, and accordingly it is feverally derived. It fignifieth the Kings Court, where his royall person, and c curia quid? his honourable houshold doe reside, and is all one with Palatium Regiam, and is derived were of the Lord, because the Soveraign Lord resideth there. It also signifieth a Tribunall, or Court of Justice, as here it doth, and then it is derived à cura, quia est locus, ubi publicas curas Festus.

gerebant.

Of Jurisdictions some be Ecclesiasticall, and some Civill, or Temporall: of both these some be primitive, or ordinary without commission; fome derivative, or delegate by Commission. Of all these, some be of record, and some not of record, some to enquire, hear, and determine, fome to enquire only; fome guided by one law, fome by another; the bounds of all and every feverall Courts being most neceffary to be known. For as the body of man is best ordered, when every particular member exerciseth his proper duty: so the body of the Common wealth is best governed, when every severall Court of Justice executeth his proper jurisdiction. But if the eie, whose duty is to fee, the hand, to work, the feet, to goe, shall usurp, and incroach one upon anothers work: As for example, the hands or feet, the office

Furifdictio quid? Bract. 1 5. fo. 400, Brit.fo.1. & 32. Fleta li.6.ca.36. unde, &c. b Lib. 10.f. 73.2. En le case del Marthalfea.

A Proeme.

of the eie to fee, and the like, these should assuredly produce disorder, and darknesse, and bring the whole body out of order, and in the end to distruction: So in the Common wealth (Justice being the main preserver thereof) if one Court should usurp, or incroach upon another, it would introduce incertainty, subvert Justice, and bring all

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things in the end to confusion.

Now when I confidered how much it would tend to the honour of the Kings Majesty, and of his Laws, to the advancement of justice, the quiet of the subject, and generally to the good of the whole Common wealth (no King in the Christian world having fuch Tribunals, and Seats of justice, as his Majesty hath, which, God willing, in this Treatise we shall make to appear) that all the high, honoursble, venerable, and necessary Tribunals, and Courts of Justice within his Majesties Realms and Dominions, as well Civill as Ecclesiasticall, might be drawn together, as it were, in one map, or table, (which hitherto was never yet done) that the admirable benefit, beauty, & delectable variety thereof might be, as it were, uno intuitu beholden, and that the manifold jurisdictions of the same might be distinctly understood and observed. We having (as else where we have said) collected some materials towards the raising of this great and honourable building, and fearing that they should be of little use after my decease, being very short, and not easily of others to be understood, if I should have left them as they were;

Out of the duty that I owe to his most excellent Majesty, and my zeal, and affection to the whole Common wealth, I have adventured to break the ice herein, and to publish more at large those things which in our reading we had observed concerning Jurisdiction of Courts. I confesse it is a labour of as great pains, as difficulty: for as in an high and large building, he that beholds the same after it is finished, and furnished, seeth not the carriages, scaffolding, and other invisible works of labour, industry and skill in Architecture: so he that looketh on a book full of variety of important matter, especially concerning sacred Laws, after it is printed and fairly bound and polished, cannot see therein the carriage of the materials, the fearching, finding out, perufing, and digesting of authorities in law, Rols of Parliament, judicial Records, Warrants in law, and other invisible works, tam laboris, quam *ingenii: yet I was the rather incouraged thereunto, both because I have published nothing herein, but that which is grounded upon the authorities and reason of our books, Rols of Parliament, and other judiciall Records, and especially upon the resolution of the Judges of latter times upon mature deliberation in many cases never published before; wherewith I was well acquainted, and which I observed and set down in writing, while it was fresh in memory.

There be amongst the Kings Records divers and many Rols, whereof you shall find little or no mention (that we remember) in our books, viz. Rot. Parliament. Rot. Placitorum Corone, Rot. Placitorum Parliament. Rot. Clauf. Rot. Brevium, Finium, Inquisitionum, Liberationum, Rot. Cartarum, Eschaetria, Pat. Rot. Ordinationum, Rot. Francia, Scotia, Vasconia, & Almania, Rot. Romana, Rot. Fudaorum, Rot. Ragman, Brangwin, Rot. Con-

In the Preface to the First part of the Institutes.

" Minerva,quasi nervos minuens.

A Proeme.

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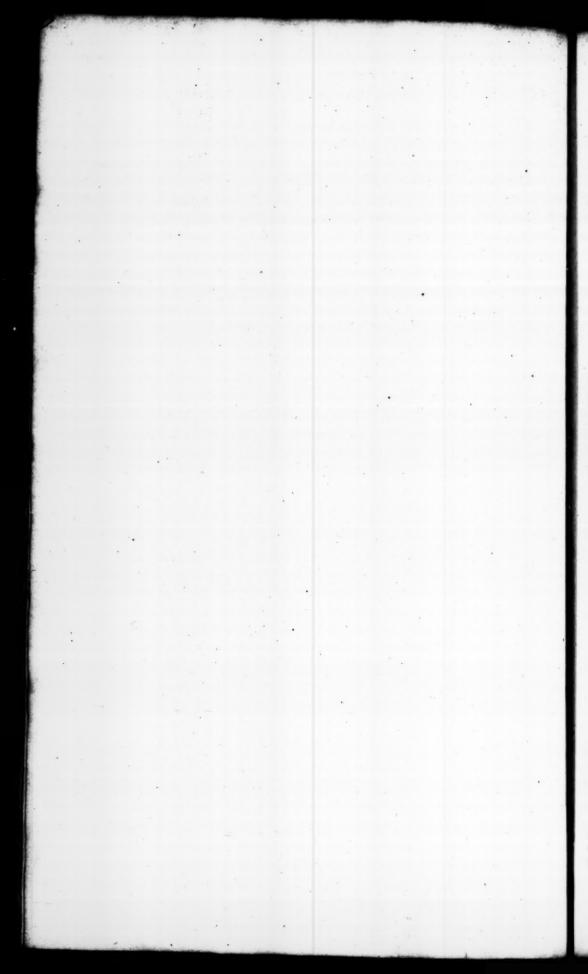
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trariensium (And the reason of the naming of this Roll thus, was for that Thomas Earl of Lancaster (a man singularly beloved) taking part with the Barons against King E. 2. in hatred of the Spencers, it was not thought safe for the King, in respect of their power and greatnesse, to name them Rebels or Traitors, but Contrarients) and some others. In this and other parts of our Institutes we cite divers Records out of many of these Rols: Herein, as in the rest of our works, you shall observe, that in the course of our reading we took all in our way, and omitted little or nothing, for there is no knowledge (seemeth it at the first of never so little moment) but it will stand the diligent observer in stead at one time or other.

And thus for all our pains, wishing the benevolent reader all the profit, we (favente Deo, & auspice Christo) begin with the High, and most Honourable Court of Parliament.



Of





THE HIGH AND MOST HONOVRABLE COVRT

Of PARLIAMENT.

CAP. I.

Of what Persons this Court consisteth.



Dis Court confideth of the Lings Pajetty litting there as See the first pare in his Royall politick capacity, and of the three Effates of the Realm:viz. On the Lords Spirituall, Archbishops and Bilhops, being in number 24, who fit there by fuc- ter names of cestion in respect of their Counties, oz " Baronies parcell of their Bithopzicks, which they hold also in their politick capacity; And every one of these when any Parliament is to be holden, ought, ex debito justitia, to have a Wartt Parl, cap. 2.

of Summons. The Lords Temporall, Dukes, Parquilles, Carls, Wiscounts, and Barons, who fit there by reason of their dignities which they hold by defrent of creation, in number at this time 106; and likewife every one of thefe being of full age ought to have a Wirit of Summons ex debico jufficia. The third effate is the Commons of the Realme whereof there be a Unights of Shires or Counties, Citizens of Cities, and Burgeffes of Burghes. All which are respecifiely elected by the Shires of Counties, Tities and Burghes , by force of and foundation, the Bings Wirit ex debito justicia, and none of them ought to be omitted : and thefe represent all the Commons of the whole Realme, and trusted for them, am, and were of and are in number at this time 493.

native, and thele Bifhops are called by Writ to the Parliament as other Lords of Parliament be. Ror. Clauf. o H.4. m.i. Glanvil, lib. 7 ca. 1. verf. finem. Bract. lib. 5. fo. 412. 427.2. 10 H. 4.6. 21 E. 3. 60. 17 E. 3. 40-48.73. Dicetus
Deane of London. a 5 K. 2. cap. 4. stat. ult. so are they ranked. Prov. 11, 14. Salus ubi multa consilta. Rot. Parl. 7 H.4 nu. 2. Multorum consilia requiruntur in magnis.

Of what number.

In the beginning Romulus ordained an hundred Senators for the good gobernment of the Common Wealth: afterwards they grew to 300, and fo mamy were of the Boule of Commons in Fortescues time; who treating with what gravity Statutes are made, faith; Dum non unius, aut centum folum confulto: tum virorum prudentia, sed plus quam trecentorum electorum hominum, quali numero olim senatus Romanorum regebatur, ipsa statuta edita sunt,

Erant autem Senatores majorum gentium, & Senatores minorum gentium, ex

patriciis & nobilibus electishii ex populo.

And it is observed that when there is best appearance, there is the best suctelle in Parliament. At the Parliament holden in the Seventh year of the raign Rot. Parl. 7 H. 5. of H.s. holden before the Duke of Bedford, Bardian of England, of the Lords Spirituall and Tempozall, there appeared but thirty in all : at which Parlia.

of the Inflitutes, Sect. 164. for the ancient and lat-Parliament, and the antiquity thereof. Modus tenendi,

* All the Bilhop. ricks of England be of the Kings Progenitors incorporation, to have fuccession Tenendum per comitatu feu Baroni ancient rime do-

Fortescue cap. 18. fo.40.

Cicero lib. 1. Epift. famil.

Rot.Parl. 90 E.3. Bonum Parliamentum.

* 14 H. 8. 3. per Fineux Hollens. Chron.34 H.8. 956 957. Dier 38 H.8. 60,61. 2 & 3 E.6.ca.36. a 28 E.3.ca.6. Regist. 177. Pl.R.2 . 2. Stanf Pl.Cor.49 b For this diftinaion, fee the fecond part of the Inflitutes, Mag. Cart. verb. [per pares.]fo. 29. a

Of ancient time both houses sat together.

Rot. Pail. 50 E.3.

See the firft part of the Inflitutes, Sed . 164. ubi fupra. a Breve Parliam. b Brevia originalia de vasto, c W.t.in exordio. & Glanvil lib.8. cap. 10. & lib. 13. cap. 32. Lib.9.cap. 10. Bracton lib.3. tract.2.cap.2. e Aneidos 10. conciliu Deoru.

ment there was but one Act of Parliament passed, and that of no great weight. In Anno 50 E.3. all the Lords appeared in person, and not one by Profie. At which Parliament, as it appeareth in the Parliament Roll, so many excellent things were sped and done, as it was called bonum Parliamentum.

And the King and these three Estates * are the great Torporation or Body politick of the Kingdome: and do lit in two houses, viz. the King and Lords in one house, called the Lords House, and the Unights, Citizens and Burgestes in

another house, called the House of Tommons.

a For this word [Commiss see the statute of 28 F.3. whereby it is provided that the Coroners of Counties shall be chosen in sull County per les Common de mesme les Councies. Commons are in legall understanding taken sorthe frank Tenants or Freeholders of the Tounties. And whosever is not a Lord of Parliament and of the Lords House, is of the house of the Tounnens either in person, or by representation, partly coagmentative, and partly representative.

But of ancient time both Houses sat together. In 8 H. 4, an Act of Parlia, ment concerning the succession of the Crown intailed to H. 4, whereunto all the Lords severally sealed, and Sir John Teberor the Speaker in the name of the

Commons, put to his feale.

Pote, that in the Letters to the Pope by all the Pobility of England at the Parliament holden in 28 E. 1. the conclusion is this, In cujus rei restimonium figilla nostra tam pro nobis quam pro tota Communitate præd. Regni Angliz præfentibe funt appenfa. Hereby I gather, that at this time the Commons had no Speaker, but both Houses sat together, for if the Commons had then had a Speaker, they would have appointed him to have put to his feale for them, as in 8 H.4. they did. Tertain it is, that at the first both Poules sat together, as it appeareth in the Treatife De modo renend Parliamentum. Vide Rot. Patl. 5 E.3. nu.3. and in other places in the fame Roll, and in 6 E. 3. in divers places it appeareth that the Lords and Commons fat together, and that the Commons had then no continuall Speaker, but after confultation had, they agreed upon fome one or more of them that had greatest aptitude for the present businesses deliver their resolution, which wrought great delaies of proceeding, and there upon the Houses were divided, and the surest mark of the time of the division of them is, when the House of Commons at the first had a continuall Speaker, as at this day it hath.

After the divition the Commons fat in the Chapter house of the Abbotof

Weftminfter.

And this Court is aptly resembled to a Clock which hath within it many wheels, and many motions. all as well the lesser as the greater must move: but after their proper manner, place, and motion; if the motion of the lesser be hindered, it will hinder the motion of the greater.

The Names.

This Court is called by severall names, as antiently [Witenage Mote] Convenus sapientum; Parliamentum, of which we have spoken in another place; Comitia, à coeundo, quia coeunt ibi deliberaturi de a arduis & urgentibus negotiis regni, & statum, & defensionem regni, & Ecclesia Anglicana concernentibus. b Commune concilium regni, c Generale concilium regni, & d Concilium regni, and Assis a generalis, and Assis a bassis and Assis a bassis and Assis a concernentibus.

Upon some of the Records and Rols of the Parliament it is written,

Perlege quæ regni clarifiima Conciliorum

Sunt monumenta, aliter nil præter fomnia cernis,

c And Virgil writing of the Parliament of the Gods useth the same word of Concilium in the same sense.

Panditur interea domus omnipotentis Olympi,

Conciliumq; vocat divûm pater, atq; hominum Rex, &c.

Tacitus in vita Agricolæ in the time of the Britons calleth it Conventus, a conveniendo,

Ingulphns

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Ingulphus, who died before 1109, faith, Rex Eldredus convocavit magnates, 3411.6 40.a. Episcopos, proceres, & optimates ad tractandum de publicis negotiis regni. Pusot. Tully calleth it, Confessum senatorum, à considendo.

Parliaments in Scripture.

and the like Parliaments have been holden in Ifrael, as it appeareth in the 1 Chronica. 28. holp History. Convocavit David omnes principes Israel, duces, tribunos, & prapolitos turmarum, tribunos, centuriones, & qui praerant substantiis & posfessionibus regis, filiosque suos, cum eunuchis, & potentes, & robustissimos quosque in exercitu Jerusalem. And when they were all assembled, the king himfelf thewed the cause of calling that Parliament. Audite me fratres mei & populus meus, cogitavi ut ædificarem domum in qua requiesceret arca foederis Domini, & ad scabellum pedum Dei nostri, & ad adificandum omnia praparavi, &c. b And the like Parliament did Bing Solomon fon of Bing David hold. Congregavit Solomon majores natu Ifrael, & cunctos principes, tribunos, & capita familiarum de filiis Ifrael in Jerusalem,&c. There was also a Parliament bolben in the time of the Judges. Convenir universus Israel ad civitatem quasi homo unus eadem mente, & uno confilio, &c. And that Parliament builded on fuch unity, hab bleffed fucceffe.

Di this Court of Parliament the ling is Caput, principium & finis. And Modus tenend, as in the naturall body when all the finews being joyned in the head do join Park their forces together for the Arengthning of the body, there is ultimum Potentia: so in the politique body when the King and the Lords Spirituall and Temporall, knights, Citizens, and Burgelles, are all by the kings command allembled and joyned together under the head in consultation for the common good of

the whole Realm, there is ultimum Sapientia.

What properties a Parliament man should have.

It appeareth in a Parliament Roll, that the Parliament being, as bath been Rot. Parlanno faid, called Commune concilium, every member of the Boufe being a Counfel. 3 H.6.nu 3. ler, thould have three properties of the Elephant; First, that he bath no call: secondly, that he is inflerible and cannot bow: Thirdly that he is of a most ripe and perfect memory: which properties, as there it is said, ought to be in every member of the Great Councell of Parliament. First, to be without gall, that is, without malice, rancoz, heat, and enop, In Elephante melancholia transit in nutrimentum corporis. Every galliff inclination (if any were) thould tend to the good of the whole body, the Common wealth. Secondly, that he be constant, inderible, and not to be bowed, or turned from the right, either for fear, reward, or favour, nor in judgement respect any person. Thirdly, of a rive memory, that they remembring perils past, might prevent dangers to come, as in that Roll of Parliament it appeareth. Whereunto we will abbe two other properties of the Clephant, the one, that though they be Maxima virtuis, & maximi intellectus, of greatest ffrength, and understanding, tamen gregatim femper incedunt, pet they are fociable, and goe in companies: for animalia gregalia non funt nociva, sed animalia solivaga sunt nociva. Sociable creatures that goe in flocks or heards are not hurtfull, as Deer, Sheep, sc. but Beatts that walk felely, or fingularly, as Bears, Fores, ic. are dangerous and hurtfull. The other that the Elephant is Philanthropos, homini erranti viam oftendit, and thefe properties ought every Parliament man to have.

Of Records of Parliament.

The reason wherefore the Records of Parliament have been so highly ertols a Mich. F. 1. in led, is, for that therein is fet down in cases of difficulty, not only the judgment, comuni banco. of resolution, but the reasons, and causes of the same by so great advice. a It is Roc. 100 Line.

Pakhig E.I.

Ros. 14. Abor de Selly. Pafeh. 28 E. 1. Cor im Rege Rot. between the King and Venables in Quare Impedit. Mich. 3 E. 2. Coram Rege Rot. 6 and many others where the ciules and reason, pro & contra, have been set down, de. 6 E.3.fo.5. per Heile. 3 E.4. 2.b.7.a. 19 H.6.63.a. per Fray.

Preparation. Acius activorum funt in pariente d.fpolico, fanh the Philosopher. b 2 Chron ca.3.2. c ludges 20.11.

Conventus.

Virg. Georg. Illum non populi fasces, non purpura regum Flexit.

Ariflotle. Bartholomaus, 22 P.4.18 per Huffey.Ror.Par. 19 E.1.Ror.12. Margery Weylands cafe. Nota quia optime,&c.

Prov. 13 16.Sa-

piens omnia agit

Vide infra.

true that of ancient time in judgements at the Common law, in cases of difficulties either criminall, or civill, the reasons and causes of the judgement were set down in the Record, and so it continued in the reigns of E. 1. and most part of E.2. and then there was no need of Reports: but in the reign of E.3. (when the law was in his height) the causes and reasons of judgments, in respect the multitude of them are not set down in the Record, but then the great Casuists and Reporters of cases (certain grave and sad men) published the cases, and the reasons and causes of the judgments or resolutions, which from the beginning of the reign of E.3. and since we have in print. But these also, though of great credit, and excellent use in their kind, yet far underneath the Authority of the Parliament Rols, reporting the Aas, Judgements, and resolutions of that highest Court.

The Summons of Parliament.

The Ling de advisamento concilii (for so be the words of the Warit of Parliament) resolving to have a Parliament, both out of the Court of Chancer send out writs of Summons at the least sorty days before the Parliament begin: Every Lord of Parliament, either Spirituall, as Archbithops, and Bishops, or Temporall, as Dukes, Barquisses, Earls, Asscounts and Barons; Peers of the Realm, and Lords of Parliament ought to have severall writs of Summons.

the Register, and in that Rol are the writs De expensis militum, civium & burgensium, & procuratorum cleri, and these are in the Register also.

Temporall Affistants.

And all the Judges of the Realm, Barons of the Erchequer of the Coif, the Aines learned Councell, * and the Civilians Passers of the Chancery are called to give their assistance and attendance in the upper house of Parliament, but they have no voices in Parliament; and their writes differ from the write to the Barons: for their writes be, Quod interficis nobifcum & eum exteris de consistion nostro (and sometimes nobifcum only) super pramissis tractaturi, vestrumque consilium impensuri; but the write to the Barons is, Quod intersisticum prastatis, magnatibus & proceribus super dictis negotiis tractaturi, vestrumque consilium impensuri.

Spirituall Assistants. Procuratores cleri.

And in every wait of Summons to the Bilhops, there is a clause requirim them to fummon these persons to appear personally at the Parliament, which is in their woods, Pramonientes Decanum & capitulum Ecclefia veftra Nor wicenfis, ac Archidiaconos totumque clerum vestræ Dioces, quod jidem Decani & Archdiaconi in propriis personis suis, ac dictum capitulum per unum, idemque clerus per duos procuratores idoneos pienam & sufficientem potelatem ab ipsis capitulo & elero divisim habentes prædict' die & loco personaliter intersint ad consentiendum hiis quæ tunc ibidem de communi consilio dicti regni nostri divina favente clementia contigerit ordinari : and the Bi thop under his feal make Certificate accordingly. And thefe are called Proceratores cleri, and many times have appeared in Parliament as Spiritual Allifants, to confider, confult, and confent, ut fupra, but had never voices ther, because they were no Loids of Parliament. Some have thought, that because the Clergy were not party to the election of the knights, Citizens, and Bur nesses, that these Procuratores Cleri were appointed to give their consent to them, but then they hould have had voices, which questionlesse they never had. And by the woods of the wait it was to confent to those things which bythe Common Councell of the Realm thould happen to be ordained, fo as their consent was only to such things as were ordained de communi concilio Regni, and that there might be an Act of Parliament without them: and in many cases multitudes are bound by Aas of Parliament which are not parties to the elections of Unights, Citizens, and Burgestes, as all they that have no

Thefe writs of Summons you thall find in former times in the close Rol, for they are not in the Register, and these are in the R

* Regist. 261. F.N.B. 229-2.ib.

dants.

Mod. Tenend. P.rl.c3.2. Rot.Clauf. 8 E.z.m.15. Dorf. Ib. 5 E.z m.15. 1b. (1 E.3 part 1. m.1. lb.22 E 3. part 2.m.3. 16.36 E.3.m.16. Rot. Par. 18 E.3. nu.1. 3 R.2. 11 R. 2. 21 R. 2. Procurato:es Cleri.Reg. 261.2. F.N.B.229.1. Produratores de Clero. In fascicul. licerarum procurat, &c. 13 H.4. & See her :after tir. Proxies.

freehold, at have freehold in Auncient demesse, and all women having freehold of no freehold, and men within the age of one and twenty years, sc. And it appeares by the treatise De modo tenendi Parliament', &c. that the Proposed fithe Clergy should appear, cum presentia corum six necessaria (which proveth that they were voicelesse Assistants only) and having no voices, and so many learned Bishops having voices, their presence is not now holden necessary.

It is to be observed that in the writs of Parliaments to the Bishops (being Lords Ecclesiastical secular) they are named by their Christian names and name of their office; as, Rex, &c. Reverendissimo in Christo patri Johanni eadem gratia Archiepiscopo Cantuar'. Or Rex, &c. Reverendo in Christo patri Johanni Episcopo Norwicens. &c. But if the Sirname be added it makes not

the wait vicious.

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But the Abbots and Priors being Lords of Parliament, religious and requestar, might be named by the name of their office only, as Rex dilecto fibi in Christo

Abbati Sancti Edmondi de Bury &c.

A Duke, a Parquille, an Carl, and Aiscount are regularly named by their Chistian names, and the names of their dignities, and rarely (pet sometimes) by their Sirnames; not are they named by their knighthood, if they have any, but rarely. If a Baron be a knight, he is regularly named by his Christian name, Sirname, and by Miles of Chivalier, and his Barony. If he be no knight, then he is named by his Christian name, and the name of his Barony; but if the Sirname be added, it maketh not the writ victous. And this holdeth as well where the Baron taketh his dignity of a place, as where he taketh it of his Sirname; but where the Sirname is dignified, there to make a somall writ, it is good to add the place of his Barony.

Of ancient time the Temporall Lords of Parliament were commanded by the Kings writ to appear, In fide & homagio, quibus nobis tenemini, and in the reign of E.3, in fide & ligeancia, and sometime, in fide & homagio, but at this day constantly in fide & ligeancia, because at this day there are no second Baronies, in respect whereof homage is to be done, which in 21 E.3. was the

true cause of this alteration.

The Ecclesiasticall Barons secular or regular were commanded by the kings witt to be present, in side & dilectione, quibus nobis cenemini, as the

Bishops are at this day.

The find in the Rols of Parliament a wait in Anno 23 R.2, and fuccessively in every Parliament untill and in the fift year of H.6. amongst the Barons that came to the Parliament, it is said Magistro Thomæ de la Warre, and some say that the addition of Magister, was to distinguish him from them that were unights: as in the Roll of 1 E.4. amongst the Barons it is said, Johanni de Audeley armigero, so; that the rest of the Barons (saving himself) and the Lord Clynton were Chivaliers. And others doe hold that he was of the Clergy before the dignity descended to him, and in that respect he was called Magister.

In the Roll of 5 H.5. and in many increeding Rols we find Baro applied to the Lord of Brepftock, as Radulpho Baroni de Greiflock, and Johanni

Baroni de Greiflock, and to few other.

In many Rols we find the Barons that were unights, named Chivaliers, wherein we observed, that they liked to be called Chivaliers rather then Milites after the legall wood (for Eques auracus is not used in Law.) For example, In anno 1 E. 4. Edmundo Grey de Rushin Chivalier, &c. and under subscribed thus, Milites ownes, except of Johanne de Audeley armigero, & Johanne domino de Clypton. And in 3 E. 4. all the Barons (saving the Lord Scales) have the additions of Chivaliers, and subscribed thus, Equites aurati omnes prater dominum Scales. And in 7 E. 4. all the Barons have the addition of Chivaliers, and therefore subscribed thus Equites aurati omnes. Hereby and by many others it appeareth that the Barons, if they were unights, were so named; and that they were not named Chivaliers unless they were unights. But in the reign of H. 8. and

12 E.3.bře 480.
31 E.3.bře 342.
32 E.3.bře 291.
7 H 6 27.
21 E.4 15.
For these regular Lords of Parliament, and when they ceased, see hereafter. pa.
7 E 4. bře 163.
7 H.6.29.
11 E.3.bře 473.

11 E.3.tit.Bre

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finte, Barons are named Chivaliers in the wait of Summons, though they be no Anights.

De Bancretto, & unde.

22 E. z. 18. tit.

Challenge, 119.

Baner legally Banerium, vexillum, Banerher, unde Banerherius 0; Banerius, i. Baro, vexillarius major, & Banerettus a Diminutive of Banerius, vexillarius minor. A Baron is called Banerherius of Banerius of the Banner, (being the Ensiane of his honour) ferbeth for a guide and direction: so the Baron obser. bing the end of his Pobility thould be an example and guide to others, as well in war as in peace, in all notable habilities and vertues, and so of the Baneret: both the Baron and the Baneret hath one kinde of Baner: for the Baneret is created in the field in the Kings Hoft, and (amongst other things) bycutting the tharp point of his Dennon, and making it a Banner. i. Vexillum Baronis: to as the Baneret hath the Baner, but not the dignity of the Baron. And this both notably appear by the case in 22 E.3. the very words of which resolution 3 will first fet dolune, and then the effect. Un fuit challenge pur ceo que il fuit a Baner, & non allocatur : car fil foit a baner, & ne tient per barony, il ferra in Af. fife. That is, one was challenged because he had the Banner and was a Bane. ret, & non allocatur by the rule of the Court, because albeit he had the Banner, pet netient per Barony, that is, he was no Baron of Parliament.

Nora seriem temporis, John Coupland a valiant Leader in Anno 20 E.3. neer Durham, at Nevils Castle, took in aperco prælio, David the second, King of Scots; for which king E. 3. created him kinight Baneret, and gave him lands

and livings, and in 22 E.3. the case in law fell out.

For this order of Entighthood see Camdens Britannia 124, and so, this case of Sir John Coupland, Camden in Linc. pag. 618. See 35 H.6. so. 46. Therethe challenge was that he was a Baneret a Lord of Parliament. See 48 E. 3.30. 48 Ass.pl. ultimo. Lib.6. so. 55. But Sir John Coupland was not the first Baneret that England had, as * some have thought, and was with us before thereign of E.3. so, in Pelle exitus anno 8 E.2. in Scaccario Johannes de Cromlewele Banerettus. And ex compoto Garderobæ Anno 9 E. 2. Nicholaus de Gray was detlared by Warit of E.2. to be de familia regis tanquam Banerettus, both so, his precedency and saltery.

For fummoning of the Commons a Writ goeth out to the Lord Warden of the Cinque Ports for the election of the Barons of the same, who in law are Burgestes, and to every Sherisse of 52 Counties in England and Wales so, the choise and election of Unights, Citizens, and Burgestes, within every of

their Counties respectively.

The beginning of the Parliament.

At the retorm of the Arits the Parliament cannot begin but by the Royali presence of the King either in person or by representation. By representation two wayes, either by a Gardian of England by Letters Patents under the Great Seale when the King is in remocis out of the Realme? or by Commission under the Great Seale of England to certain Lords of Parliament representing the person of the King, he being within the Realme in respect of some infirmity.

a The patent of the Diffice of a Gardien of England reciteth his speedy going beyond sea, or in remotis, or urgent occasions and the cause thereof. Nos quod pax nostra tam in nostra absentia quam prasentia inviolabiliter observetur, & quod siat communis justicia singulis conquerentibus in suis actionibus & querelis, de sidelitate dilecti & sidelis nostri Edwardi dueis Cornubia, & comitis Cestriz silii nostriprimogeniti plenarie considentes, constituimus ipsum custodem dicti regni nostri ac locum nostrum tenent' in codem regno quam diu in dictis transmarinis partibus moram secerimus, vel donec inde aliud duxerimus. (And this is that capitalis Justiciarius mentioned in Mag. Carta cap. 11. When the Ling is extra regnum) with a clause of assistance. But yet if any Parliament is to be holden, there must be a speciall Commission to the Gardien, to begin the Parliament, and so proceed therein: but the Teste of the Warit of Summons shall be in the Gardiens name.

* Speed. See hereafter,

Rot.Parl. 3 H. 6. nu. 1.
H. 6. fat in Parliament when he was 3 or 4 years old, and fo did he in the 6 and 8 yeare of his reign.
The Royall Perfon reprefented two wayes.
a Rot.pat.An.24.
E. 3. m. 18.
The Parent of the Gardianthip.

See Rot. Parl. 25 E.3.nu.10. (

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The High Court of Parliament. Cap. 1.

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a Parliament was holden in quinti quinto, viz. Anno 5 H. 5. before John Rot, Parl 5 H.5. Duke of Bedford, brother and Lieutenant to the Bing, and Bardien of England, and was fummoned under the Tefte of the Bardien of Lieutenant. [3t is enaced, that if the King being beyond the leas, cause to summon a Barliament in this Realme, by his Writ under the Tefte of his Lieutenant : and after fuch fummons of Parliament gone out of the Chancery, the Bing arriveth in this fat ou flas mino-Realm: that for fuch arrivall of the fame Bing fuch Parliament Chall not be Diffolved, but the Parliament Chall proceed without new funumons.

In 3 E. 4. a Parliament was begun in the prefence of the King and procoqued untill a further day: and then William Archbifhop of Pork the Bings partibus transfora-Commillary by Letters Patents held the fame Parliament and adjourned the fame, sc. The cause of the faid prorogation was , for that the king was enforced

to go in perfon to Blocefferthire to repreffe a retellion there.

As bath been laid, the Kings person may be represented by Commission under the Ozeat Seale to certain Lozds of Parliament authozizing them to begin the Parliament, and both the Bardien and fuch Commissioners do fit on a forme pla-

at neer to the begrees that go up to the Cloth of @ffate.

And in 28 Eliz. the Queen by her Commillion under the Breat Seale bearing date the 28 of Doober Anno 28, reciting that the foz urgent occasions could not be prefent in her Royall Perfon, Did authorize John Whitgoift Archbithop of Canterbury, William Baron of Burghley Lord Treasurer of England, and Henry Carle of Derby Load Steward of the Bouthold then being , Ad inchoandum, &c. renendum. &c. & ad procedendum, &c. & ad faciend' omnia & fingula, &c. nec non ad Parliamentum adjornandum & prorogandum, &c. which Commission is entred in hac verba in the Journall Book in the Lords house, and in the upper part of the page above the beginning of the Commission is waitten, Domina Regina repræsentatur per Commissionarios, viz. &c. The 29 bay of . 2 part par.m. 10. Daober, the lato Commillioners litting on a forme before the Cloth of Chate, after the Commission read, adjourned the Parliament untill the 15 of February following, ac. And this Parliament began the 29 of Ddober, and not the 15 of February, wherein the Printed Book is miltaken, for then the Parliament begun,and was prozoqued.

Thus much thall fuffice, when the kings perfon thall be reprefented.

But when the Parliament Chall not begin at the day of the returne, but for certains urgent causes then to be prorogued untill another day, and then to be bolden before the King, there is a ready way for the effecting thereof, and that is by Writ Patent under the whole Great Seals, reciting the Writ of Sum. mons, and to bear Teffe before the retorne thereof, and figned above with the Bings signe Danuell, and directed Pralatis, magnatibus, proceribus hujus regni, ac milicibus, civibus, & burgenfibus convocatis & electis ad hoc Parliamentum pro quibusdam causis & considerationibus, &c. to progogue the Parliament to a certaine day, and at the reforme of the Summons, this Warit being read in the Apper House befoge certaine of the Logds of Parliament, and of the Commous there affembled, and propogation made accordingly, the Parliament is prologued: And this was to done in Anno i Eliz. the retoins of the Summons of Parliament being the 9 of Odober, and by fuch a Writ it was prozogued untill the 25 of February following, at what time in judgement of law the Parllament did begin, and was holden, and not on the 9 of Daober, as it was adjudged. A like propogation was made by the Queens like Writ of the Parlia: ment holden Anno 5 Eliz, at both which dayes of propogation, the Parliament did hold befoze the Queen her felfe, untill the discolution of the same, which nor, Writs are entred in hac verba in the Journall book.

* 8 H.g.cap.r.in print. Nota, Quia in pre-Jentia majoris cefin And the Letters Patents of this office is with a quamdiu in rinu moram fecerimes, &c. ut fup. Rot. Parl 3 E.4. a Rot.1.13,14. Like Letters Patents to the Earl of Warw, in the same Par liament. nu.15. Parl. 28 Eliz. See an excellent president hereof. Rot, clauf. Anno 8 E.2.7. Sept. m. 16. & I pars pat. An. 8 E.2.m. 26.

Prorogued by

gardiani Angliz.

with a comman-

dement of atten-

Simile 10 E.z.

13 E.3.nu.T. ftat. 2.in absentia

dance.

Dier.3 El.203.8 And herein the printed book of flatutes erreth, for here the Parliament begun

What is to be done the first day of the Parliament.

On the first day of the Parliament, the King or most commonly the Lord Chancellos or keeper of the Ozeat Seale in the prefence of the Lords and Commons, do thew the causes of the calling of his High Court of Parliament, but the

Bing

22 E.3. Sir W.lliam Thorpe Chiefe laftice. a 17 E. 3.nu.7,8. Sir Bart. de Burgbeift. 25 E.3.nu.1.6. 27 E.3.111.2. 28 E.3.nu.1. 29 E. 3.nu.1. Sir William Shar-Shiell Chiefe Juft. 45 E.3. nu.8. Sir Robert Thorpe Chiefe Justice 47 E.3.00.2. Sir Io. Knivet Chiefe Juffice.

Ling may appoint any other: as many times, the Chiefe Justice of England, and sometime "some other, as may appear in the Parliament Rols, only one I will transcribe.

That this day Sir Henry Green the Kings Thiefe Justice (although the Lord Chancello, were present) in the presence of the King, the Lords and Commons, beclared the causes of the Parliament c in English, viz. For redress of matters touching the Church, for observation of the peace, for the affairs of Scotland, for the inhauncing of the price of Wooll, sc. d But at the next meeting Simon Langham Bishop of Ely shewed the causes of Parliament, and in the end, he did in the Kings name require the Commons to make choice of a learned and discreet man to be their Speaker: and when a Bishop was Lord Chancello, he took a text of Scripture which he repeated in Latin, and discoursed upon the same. But when a Judge was Lord Chancello, he took no text, but in manner of an Dration shewed summarily the causes of the Parliament.

50 E.3.nu. 2. Sir Io. Knivet Chief Justice, 51 E.3.nu. 13. by Sir Robert Ashton the Kings Chamberlain. 6 Parl 36E. 3. nu. 1. Simon Langham B. of 1 ly Chancellor. 6 And sowas it done ever after. 5 R. 2. nu. 2. The causes of Parlament were in ancient time showed in the Chamber Depeint, of St. Edwards Chamber. d Parlia, 27.E.3.nu. 1.

The Election of the Speaker.

It is true the Commons are to chife their Speaker: but seeing that after their choise the king may resule him, so, avoiding of expence of time and contestation, the use is (as in the Conge de estier of a Bishop) that the king both name a discreet and learned man whom the Commons elect: but without their election no Speaker can be appointed so; them, because he is their mouth, and trusted by them, and so necessary, as the House of Commons cannot sit without thin: and therefore a grievous sicknesse is a good cause to remove him, as in 1 H.4. John Chenye Speaker chosen and allowed, was so; sicknesse, so as he could not serve, discharged, and Sir John Doreward chosen in his place: and so william Sturron, after he was chosen and allowed Speaker, removed so, grievous sicknesse, and Sir John Doreward chosen in his place. At the Parliament holden in 15 H.6. Sir John Tirrell knight was chosen and allowed Speaker, and so; grievous sicknesse removed, and William Beerly Esq; chosen in his place, ac.

But ficknesse is no cause to remove any Unight, Citizen of Burgesse of the House of Commons: So note a diversity between the Speaker, and any other of the House of Commons, and this diversity being not observed begat an error by some opinion in 38 H.8. cir. Parliament Brook 7. for continual experience is

fo the confrary.

The presentment of the Speaker.

Wilhen the Commons have chosen their Speaker, the person elected franding in his place difabling himselfe to undergoe to weighty a charge, as in his different tion he thinks fit, defires them to proceed to a new choile: which being denied, and he let in the Chaire, then he prayeth them to give him leave, that he may disable himselfe to the King: after this they present him to the King in the Lords Doule ; where after he hath difabled himfelfe to fpeak befoze the Bing, and for the whole body of the Realme, and made humble fuit to the Bing, left by his infufficiency the businesse of the Realme may be hindred, to be discharged, and a moze infficient man to be choien: if he be allowed by his spajeffie, then he mas both a Protestation consisting on three parts: First, that the Commons in this Parliament may have free speech, as of right and by custome they have used and all their ancient and just priviledges and liberties allowed to them. Secondly, that in any thing he chall deliver in the name of the Commons (if he chall commit any error) no fault may be arrected to the Commons, and that he may refert again to the Commons for declaration of their true intent, and that his error may be pardoned. The third is, that as often as nece Tity for his Pajeffies fervice, and the good of the Confimon wealth thall require, he may by the direction of the Youfe of Commons have access to his Royall Berson.

Sickneffe canfe to remove the Speaker. 1 H.4. nu.62.63. Rot.Parl.1 H.5. nu.9.10,11. Rot.Parl.15 H.6 nu.10. & 27.

Sickness no cause to remove a Member of the House of Commons. 38 H.8. Parl, Br. 7

What the Speaker shall do when he is chosen.

The King may allow of his excuse, and disallow him, as Sir Iohn Pophain was. 28 H.6. nu.6. The Protistation of the Speaker.

This is in the Parliament Rols talled a Protestation in refred of the first part, the nature whereof is to be an exclusion of a conclusion, and herein that the House of Commons be not concluded to speak-only of those things which the Bing o: Lord Chancelor, ic. hath belivered to them to be the causes of the calling of this Court of Barliament, but in a Parliamentary courfe of all other ar proms and urgent bufineffe, which principally confift in thefe five thanthes; as it appeareth in the Writs of Summons to the Logds Spirituall and Temporall, viz.

Rot. Par-1. R. 1. nu. 15. &c. Rot. Parl. 2 H.4. nu. 8. Sir drnatd Savage Speaker. 5 H.4.nu.8. 7 H.4.nu.11. Sir 10. Tibetoft speaker. & ibid. nu.30.1 H. 5.nu.7

2 H. s.nu. to. And fo in succeeding times called a Protestation

The matters of Parliament.

1. Touthing the Bing. 2. The Cate of the Bingdome of England. 3. The pelence of the Kingdome. 4. The frate of the Church of England: and 5. The ocience of the fame Thurch. And this appeareth by expecte woods in the Partiament Tarit in these woods: Pro quibusdam arduis urgentibus negotiis, nos, statum, & defensionem regni nostri Anglia, & Ecclesia Anglicana concernentibus quoddam Parliamentum nostrum, &c. teneri ordinavimus, &c. And thefe words the frate and defence of the kingdome are large words, and include the reft. And though the fate and defence of the Church of England be laft named in the Wirit, pet is it first in intention, as it appeareth by the title of every parliament : As to; example, a To the honour of God and of holy Church, and quiemeffe of the people,&c.

Now for as much as divers laives and fratutes have been enaded and probided for these ends aforesaid, and that divers mischiefs in particular, and divers grickances in generall concerning the honour and fafety of the King; the state and defence of the Kingdome and of the Church of England might be prevented, an excellent law was made Anno 36 E. 3. which being applyed to the faid Warits of Warliament doth in few and effectuall words let downe the true lubject of a Parliament in these words. For the maintenance of the said Articles and Statutes, and redreffe of divers mischies and grievances which daily happen, a Par-

liament shall be holden every year, as another time was ordained by a * Statute. Before the Conquest Parliaments were to be holden twice every year, Celeberrimus autem ex omni latrapia bis quotannis Conventus agitur. Liting E. 1. kept a Parliament once every two year for the most part, and now it is enaded, that a Parliament Chall be holden once every year.

The Roman ranguished our Ancestors the ancient Britains, for that they as fembled not, they consulted not in common with them, nor Common Councels, as Tacitus in vita Agricola faith. Nec aliud adversus validissimas gentes pro nobisutilius, quam quod in * commune non confulunt. Rarus ad propuliandum commone periculum conventus: Ita! dum finguli pugnant, universi vincuntur. 13nf to return to the matters of warliament.

And it is chaded and declared by Authority of Parliament in Anno 4 H.S. That all fuits, accusements, condemnations, executions, fines, amerciaments, punifiments, corrections, charges, and impositions at any time from thenceforth to be put, or had upon any member, either of that prefent Parliament, or at any Parliament at any time after that Act to be holden, for any Bill, * speaking, reasoming, or declaring of any matter or matters concerning the Parliament, to be communed, or treated of, be utterly void and of none effect. Which latter branch is generall. Pow what matter or matters concern the Parliament appear before. And this clause of the Act of 4 H. 8, is declaratory of the ancient law and cufrome of the warliament.

And this both not only appear by the Whits directed to the Lords of Parlia. ment, but by the Writs for election of the Commons. For crample. The Writ to the Sheriffe of Porfolk for election of the Linights, Citizens, and Burgeffes within that County is Rex Vicecomiti Norff. Salutem. Quia nos de avisamento & affeniu concilii nostri pro quibusdam arduis & urgentibus negotiis, nos, statum, & defensionem regni nottri Anglia, & Ecclesia Anglicana concernentibus quod- Burgeste.

Rot. Parl 9 H.4. An A& intituled Indemnitie les Scignions & Commous, not printed. * See W.1. Anno 3 E.1. in the preamble, the flate

of the Realme, & ot hely Church. And the 2 part of the Inflitutes, W.1.cap.1.and in the preamble. a 36 E.3. 50 E.3.

36 E.3.cap.10. Parliaments. ought to be holden once ia a year. 4 E. 3.cap. 14. Inter leg. Edgar

Tacitus in vita Agricolz, pag. 306.

cap. 5.

Nota, Comune concilium. Conventus.

4 H.S.c.S.

* Neg; timida probitas, neque improba forticudo Rei publicæ est utilis.

The like Writ to all the other Counties, faving in Wales they have but one Knight and one

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a Nota, ad faciendum & confentiendum. And every City two Citizens, and out of every Burgh two Burgeffes.
b Nota, super negotiis antedictis.

dam Parliamentum nostrum apud, &c. teneri ordinaverimus, & ibidem cum Prælatis, magnatibus, & proceribus dicti regni nostri colloquium habere & tractatu: iofi Vicecom. Norst. przcipimus firmiter injungend quod facta proclamatione in proximo comitatu tuo post receptionem ejusdem brevis, duos milites gladis cinctos, &c. elegi faceret, &c. ad faciendum & consentiendum hiis que tunc ibidem de communi concilio nostro Angliz (favente Deo) contingerent or. dinari b super negotiis antedictis, ita quod pro desectu potestatis hujusmodi, sen propter improvidam electionem Militum, Civium & Burgensium prædict dich negotia nostra infecta non remanerent quovismodo. And this power ertenbeth equally to all Anights, Citizens and Burgelles of Parliament,

What the Speaker shall doe after his allowance.

After the Commons with their Speaker are come from the Loads boule and that the Speaker is fet in the Chair, then he desireth the Commons, that feeing they have chosen him for their mouth, that they would favour rably affift him in their arduous and important affairs, and that he will doe them the best fervice be can with all diligence and faithfull readinesse, of to the like effect.

The Writs of Summons of Parliament, which are to be found in the close Roll from time to time.

Seeing the fummons of Parliament (as hath been faid) is by the kings writs, which tend to the beginning of the Parliament, it thall be necestarpto freak somewhat of those writs. And it is to be observed, that the substance of those writs ought to continue in their original essence without any ale teration, or addition, unleffe it be by Act of Parliament. For "if original write at the Common law can receive no alteration or addition but by Ad of Parliament, a multo forciori, the writs for the Summons of the highest Court of Parliament can receive no alteration, or addition, but by Ac of Parliament. Where the writs of Summons illucd out of the Chancer, and were returnable in the Court of Parliament, the return thereof could not be altered, and returnable into the Chancery, but by Ad of Parliament, And because the words of the writ sor election of Unights, ac. were, down milites gladiis cinclos, &c. it required an Ac of Parliament, that notable Cfauires might be eligible.

Walfingham faith, that in Anno Domini 1404. which was anno 6 H.4. in the writs of the fummons of Parliament, there was added by the King a commandment in the wait, that no Lawper thould be returned Anight of Burgeffe, (but the Historian is deceived, for there is no fuch clause in those write, but it was wrought by the Kings Letters by pretert of an Didi nance in the Lords House, in 46 E.3) But at the nert Parliament in 7 H.4 at the grievous complaint of the Commons, being interrupted of their free election by those letters (which were letters of Austice and right) it is amongs other things, enacted, That elections * Chould be freely, and indifferently made notwithstanding any prayer, or commandment to the contrary, i. fine prece, by any prayer or gift, & fine precepto, without commandment of the bing by witt, of otherwise, or of any other; which was a close, and prodent falbe, not only for that fore, but for all other in like case, and is but an Act declaratory of the ancient law and custome of Parliament,

Petitions in Parliament.

On the first day of the Parliament, after the Commons be departed to choose their Speaker , then are certain Justices Allistants , and Civilians spatters of the Chancery Attendants, viz. four Justices, and two Attendants appointed

*Braft,l.g.f. 413. Britton 123.227. Fleta li. 2. ca. 12. W.z.ca 25. 1. pr of the Inft. Sect 101. Epift. ad librum. c 7 H.4 ca.15. Rot. Par. 5 R.2. nu.1,2 &c.they be now returned into the Chancery, and kept in the office of.theClerk of the Crown there. d 23 H.6.ca.15. Parl. 6 H.4. This was called

indoctum Parliamentum, lacklearning Parliament. Rot.Parl.46 E.3.

nu 13.5 R.z.c.4. 7 H.4.ca.15. See hereafter more of this matter,in this chapt. pa. and who be eligible,&c.

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appointed to be receivers of the Petitions of England, Ireland, Wales, and Receivers of Pe-Scotland, and that those that will beliver their petitions, are to deliver them within fir days following. At that time there are other Justices and Its bilians attendants, viz. three Justices and two Attendants appointed to Galcoign, Guyte receivers of petitions for Balcoign and other places beyond the Seas, and of the Ides, and that they deliber their petitions within fir days, tc.

Then are appointed of the Pobility Lords of Parliament and Bishops, viz. Sir of the Pobility, and two Bishops to be triers of the said Detitions for England, Ireland, Wales, and Scotland, they together, og four of the Beelates and Lords aforefaid, calling to them the Kings learned Councell, attendants in Bartiament when need thould be, and to fit in the Chamber of the Area: fury. The like appointment of the Pobility and Bishops to be triers of tho Betitions for Balcoign, and other places beyond the Seas, and of the Iles, and a place appointed for their fitting, calling to them the kings learned Councell when need would be. For Petitions to be preferred into the Lords Boule in Parliament for the Countries and places aforefaid, this was the ancient constant law, and custome of the Parliament continued untill this day. Wherein these things are to be observed. First, the extent of the Jurisdiction of the Parliament of England. Secondly, that 'for expediting of causes, there thould be receivers of all Petitions, both of Judges of the Realm for their knowledge in the laws of the Realm, and of Civilians attendants, who might prepare and inform the triers, being Lords of Parliament, of the quality of those Petitions. Thirdly, that there Chould be of the Loids Spirituall and Tempozall triers of those Petitions to try out lobether they were reasonable, and good and necessary to be offered and propounded to the Loads.

Of Petitions in Parliament some be of Right, some of Grace, and some mirt of both: some preferred by the Lords Spirituall, some by the Lords Temporall, some by the Commons, some by the Lords and Commons. Extra Parliamentum nulla petitio est grata, licet necessaria; In Parliamento nulla petitio est ingrata, si necessaria. All Potitions ought to contain convenient certainty and particularity, so as a direct answer may be given to them.

b Betitions being timely preferred (though very many) have been answered by the law and cultome of Parliament befoze the end of the Parliament. This appeareth by the ancient Treatife, De modo tenendi Parliamentum, &c. in these woods faithfully translated in a fair and ancient Manuscript, for Bils and Petitions. The Parliament ought not to be ended while any Petition dependeth undiscussed, or at the least, to which a determinate anfwer is not made.

And in the Parliament Rols, there is a Title towards the end of the parliament. The Petition of the Commons, &c. with their answer entred and recorded in the Roll of Parliament. And one of the principall ends of calling of Warliaments is for the redrette of the mischiefs and grievances that daily happen. * Innovations and Povelties (sometimes tearmed in Rols of Parliament Novelries) in Parliamentary proceedings are most dangerous, and to be refused. And sometime the king both answer the Petition of the Commons by the affent of the Pzelats, Counts, Barons, and Commons themselves, such unity bath been for the common good in Parliaments in former times.

Appointment of Committees of Grievances, &c.

The Commons being the generall Inquisitors of the Realm, have principall care in the beginning of the Parliament to appoint days of Committees, viz. of griebances (both in the Church and Common wealth) of e Bracon. Gra-

vius eft æternam quam temporalem lædere majestatem. And it appeareth by the statute of 36 E.3. cap. 10. That it is one of the principall ends of the Parliament to redresse grievances. And the words of the Writ of Parliament be, De arduis & urgentibus negotiis statum & defensionem Ecclesia Anglicana concernentibus.

land, Ireland, Wales, Scotland. an, Poiters, Normandy, Amou,

Triers of Petitions.

a Ro.Par. 18 E. 1, fo.z.& 16. 50 E.3.nu.125. 66. 81. 17 E.3. nu.55,56. 36 E.3. nu. 35. 43 E.3.nu.19. 45 E.3.nu-33. 47 E.3.nu.16. 1 R.1,nu.132.80 b Ro. Par. 17 E. 3. nu-60. 25 E.3. nu.60. 50 E.3. 212. 1 R.2.134. &c.2 R.2,nu.38. 1 H.4.132.2 H.4. 3.25.3 H.4.113. 23 E.3.Mu.42. 25 E.3.nu.12. 36 E.3.nu.31. 50 E-3.nu.52. c 36 E.3.ca.10. 18 E.3.ca.1.4. 50 E.3.nu.17. Lions cafe. Rot. Far. 1 H. 5. nu.17. 13 H.4. nu.9. 11 H.4.c.9. * Innovations & Novelties. d 36 E.z. Rot. 19.

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Courts of Instice, of priviledges, and of advancement of trade. These Committees when they meet, they elect one of them to sit in the Chair in likenesse of the Speaker: the Committee may examine and vote the questions handled by them, and by one, whom they appoint, report their resolution to the House, and the House, sitting the Speaker, to determine the same by question.

Absents, Proxies.

21 E.4.50. The ancient Record, De modo tenend Parl. &c. verf. finem, optime. Any Lord of the Parliament by licence of the king upon just cause to be absent, may make a Prory: and in the bundle of Prories Anno. 5 H.5. it appeareth, that in those days a Spiritual Lord of Parliament might have madehis Provie to the Procurators of the Clergy, or to any other Clerk, but at this day be cannot make it but to a Lord of Parliament: but a knight, Citizen, or Hungeste of the house of Commons cannot by any means make any Prory, because he is elected and trusted by multitudes of people.

Of the ancient Treatise called Modus tenendi Parliamentum.

Pow for Antiquity and Authority of the ancient Treatife called Modus tenendi Parliamentum, &c. whereof we make often use in this part of the Institutes; certain it is, that this Modus was rehearled and declared before the Conquerour at the time of his Conquest, and by him approved for England, and accordingly the Conquerour according to Modus held a Parliament so,

England, as it appeareth in 21 E.3. fo 60.

After king H.2. had conquered Ireland, he fitted and transcrited this Modus into Ireland in a parchment Roll, for the holding of Parliaments there, which no doubt H.2. did by addice of his Judges, being a matter of his great weight and legall. This Modus in the parchment Roll transcribed as atorelate, by H.2. remained in Ireland, and in anno 6 H.4. was in the customy of Sir Christopher Preston Unight, a man of great wisdome and learning, which Roll king H.4. in the same year, De assensi Johannis Talbor Chivalier his Lieutenant there, and of his Councell of Ireland, exemplified for the better holding of the Parliaments there; and in the exemplification it expressly appeareth that H.2. did transcribe this Modus, as is above said.

This Modus was feen by the makers of the feature of Pagna Carta, Ando 9 H.3.ca.2. concerning the reducing of the * ancient reliefs of entire Carldomes, Baronies, and knights fees according to such proportions as is contained in the Modus, which they could not have done so punctually, if they had not seen the same, whereof you may read more at large in the First part of the Institutes, Sect. 103, so.76. Verbo Relief. And some part of this Modus is cited in the Parliament Roll, Anno 11 R.2. and other Records of Parliament, and upon diligent search we can find nothing against it. But many very ancient copies you may find of this Modus, one whereof we have seen in the reign of H.2. which containeth the manner, som, and usage of Gilbert de Scrogel Parshall of England, in what manner he occupied and used the said room and office is all his time, and how he was admitted, ac, at the Coronation of H.2. and of his knight marshall, and other inferiour officers, ac, and adjoyned therept to, and of the same hand is this Modus, as sit so, him to know.

But left it might be said to me, as it was once said to an Dratour, who having spoken much in commendation of Hercules: It was demanded of one that stood by, Quis visuperavit? Ad quod non fuit responsion. But now let us

return to Prortes.

A Lord of Parliament by licence obtained of the Ducen to be abtent, made a Prory to three Lords of Parliament, Conjunctim & divisim dans eispotestatem tractandi, tractatibusque auxilium & consilium impendendi, atque statutis & ordinationibus, que inactitat contigerint, consentiendi, Ita quod non si melior conditio occupantis. And one of the Procurators gave consent to a bill, and

See the Second part of the Inft. Mag. Carta ca.z. pag.7,8. See the first part of the Institutes sea. 164.fo. 110. See the 2. part Inft. pa.8. the Charter of King H. 1.1t his Coronation having relation to Modus tenendi Parl. See also the Chre of King John anno 17. Math. Par. 246. per antiquum relevium, viz beres comitus pro comite integro 100 l. hares Barenis pro Baronia integra 100 marc. & heres militis de feodo militis integre. 5.1. See Mig. Cart. cap. 2. " It is juftly called antiquum re levium, because it is according to the proportion of this ancient Mo-

At the Parliament holden Au. 1 Eliz-

dus.

Cap.1. The High Court of Parliament.

the two others faid, not content. And first it was by order of the Lords bebated amongst the Judges and Civilians attendants, and conceived by them that this was no voice, and the opinion was affirmed by all the Lozds of Barliament feriatim. Another queftion was moved at that time , that if a Lord of Parliament make a Prory, and after come into the Lords house of Parliament. and lit there without arguing, consenting or speaking any thing : and it was conceived by the Judges and Civilians , that his litting there without faving ampthing was a revocation in law of his Poory; à Fortiori, if he moved, oz funke to any matter there propounded, and their opinion was refolved by the Lords feriatim. And thefe were the prories of the Bilhop of Bathe , the Lord

Howard Chamberlain, and of the Load Windefor.

Bing John in the 13 year of his reign being in extream fear of both the Pove and the French king, and especially of his own subjects (and what is fear, Lib. Sap 17. 12. faith Solomon, but a betraying of the fuccours that reason offereth?) fent Am. Mat. Par. pa. 233. ballabours to Admiralius Murmelinus great Emperour of Turky Sir Thomas Hertington and Sir Ralph Nicholfon lanights, and Sir Robert of London clerk, nuncios suos secretifimos, to offer to be of his Religion, and to make his kingdome Tributary to him, and he and his subjects to be his vastals, and to hold his kingdome of him. But that Infidell great Prince, as a thing unworthy of a King, to deny his religion, and betray his kingdome, utterly refused to accept. Bing John in the 14 year (the next year) of his reign by his Charter 15 May , by the threats and perswalion of the Popes Commillary Pandulphus furrendzed his kingdomes of England and Ireland to Bope Innocent the Third, cum communi confilio Baronum (as he inferted therein) and that thence forward he would hold his Crown as feedary to the Pope, paping for both the faid kingdomes 1000, marks. Whereupon doing homage and fealto the Pope by the hand of Pandulphus, and taking off the Crown from his head furrended it to the Hope by Pandulphus, at whose feet be law also the ropall Enlignes, his Scepter, Swood and Ring; all which was afterward accepted, approved and ratified by the Pope, by his Bull which was called Bulla aurea.

Gregorius Papa petiit à Rege E.1. per literas annuum censum 1000 merc, Rex respondet se sine prælatis & proceribus regni non posse respondere, & quod Jurejurando in Coronatione sua fuit astrictus, quod jura regni sui servaret illibata, nec aliquid quod Diadema tangat regni ejusdem absque ipsorum requisit'

confilio faceret.

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In anno 40 E.3, the Pope by his Ambaffador demanded of the Ling Homage Rot. Par. 40 B.3. for the kingdome of England and land of Ireland, and the arerages of 1000. marks by the year, granted by King John to Pope Innocent the third and his faccestors, and threatned that if it were not paid, the Pope was resolved to proceed against the king. Whereupon the king in the same year calleth his Court of Parliament, and in the beginning of that Parliament (faith the Re-1010) Fuit monstre a les Prelates, Dukes, Countes, Barons, les Chivaliers des Counties, Citizens & Burgesses en le presence le Roy per le Chancelor, coment'ils avoient entendue les causes del summons del Parliament en generall, mes la volunte le Roy fuist que les causes seussent monstres aeux en especiall : lour disoit coment le Roy avoit entendue que le Pape per sorce dun fait quel il dit que le Roy Johan fesoit au Pape de luy faire homage pur le realme D'engleterre & la terre D'irland,& que per caule du dit homage qil luy deveroit paierchescun an perpetuelment millemarcs, est en volunte de faire proces devers le Roy & son roialm pur le dit service & cens recoverir; de goi le Roi pria as dits Prelats, Dukes, Countes & Barons lour avys & bon conseil, & ce qil enferroir, en case que le Pape vorroit proceder devers luy, ou son dit roialme per celle cause: & les Prelats requeroient au roy quils se purroient per eux soul aviser & respondre lendemain, queux Prelatz le dit lendemain adeprimes per eux mesmes, & puis les autres Dukes, Countes, Barons & Gentz respondirent & disoient, que le dit Roy Johan ne nul autre purra mettre lui, ne son roialme, ne son people

Rot.Cl. An. 3 E.t. m.g in Schedula.

nu.8. An Act never yetprinted.

I have thought good to tran-fcribe it in proprio Idiomare.

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No King can put himfelt nor his Realm, nor his people, in fuch Subjection without affeat of the Lords and Commons in Parliament, and therfore if K. John had done it by the Common Councell of his Barons as his Charter purported, yet it bound not, for that it was not done in Parliment by the King, the Lords and Commons: and albeit it might(as here it appeareth,it cannot be done with. out Authority of Parliament) yet it is Contra legem & consuctudinem Parliamen. ti, to doe fuch a thing as by the next Reco.d in 42 E.3. appeareth. *Ko Par. 42 E.3. nu.7. Lex & consuetudo Parliamenti.

en tiele subjection sanz assent & accorde deux: & les communes sur ce demander & avilez respondirent en mesme le manere; sur qui feust ordeine, & affentu per commune affent en manere quensuyt. En se present Parlement tenuz a Westin' Lundy proschein apres la invention de la Seinte-Croice lan du reign le Roy Edward quarantisme, tant sur lestat de Seinte Eglise, come des droits de son roialm & de sa Corone maintenir, entre autres choses estoient monstrez coment ad este parlee, & dit que le Pape per force dun fait quele il dit que le Roi Johan, iadir Roy d'engleterre fesoit au Pape au perpetuite de luy faire homage pur le Roialme Dengleterre & la terre de Irland, & per canse du dite homage de luy ren. dre un Annuel rent: ad este en volunte de faire processe devers le Roi pur la ditz services & ceus recoverir; la quele chose monstree as Prelats, Dues, Countes, Barons, & la commun' pur ent avoir lour avys & bon conseil, & demandee de eux ce que le Roi enferra en case que le Pape vorroit proceder ou rien attempter devers lui ou son roialme per celle cause? Queux Prelats, Ducs, Counte, Barons & Communes en sur ce plein deliberacion responderont & disoient dune accorde, que le dit Roy Johan ne nul autre purra mettre luy ne son roj. alme ne son people en tiel subjection sanz assent de eux. & come piert per pluseurs evidences, que fi ce feust fair,ce feust fair sanz leur affent, & encontre son serement en sa Coronacion, Et outre ce le Ducs, Countes, Barons, Gents & Communes accorderent & granterent que en case que le Pape se afforceroit ou rien attempteroit per proces, ou en auter manere de fait de constreindre le Roi ou ses subjects de per fair ce quest dit q'il voet clamer telle partie oils resistront & contreesterront ove toute leur puissance.

This Poble and prudent king took the fairest and surest way to give satisfaction, whereof the Pope being certified, the matter ever since hathre

Med in quiet.

* It is declared by the Lords and Commons in full Parliament, upon be mand made of them on the behalf of the King, that they could not aftent to am thing in Parliament, that tended to the differion of the King and his Crown, whereum to they were sworn. See hereafter in the case of Ireland.

Lex & consuetudo Parliamenti.

By the ancient law, and custome of the Parliament a proclamation ought to be made in Aestminster in the beginning of the Parliament, that no man upon pain to lose all that he hath, should during the Parliament in London, Aestminster, or the Suburbs, see wear any privy coat of plate, or goe armed, or that games or other playes of men, women, or children, or any other pastimes or strange shews should be there used during the Parliament: and the reason hereof was, that the High Court of Parliament should not thereby be disturbed, nor the members thereof (which are to attend the arduous and ment business of the Church and Common-wealth) should not be withdrawn.

* It is also the law, and custome of the Parliament, that when any new de vice is moved on the kings behalf, in Parliament so; his aid, or the like, the Commons may answer, that they tendred the Kings estate, and are ready to aid the same, only in this new device they dare not agree without conserence with their Countries; whereby it appeareth, that such conserence is warran-

table by the law and custome of Parliament.

And it is to be observed, though one be chosen for one particular County, on Borough, pet when he is returned, and sit in Parliaments, he serveth for the whole Realm, for the end of his comming thither, as in the writ of his collection appeareth, is generall, and faciendum & consentiendum hiis que une & ibidem de communi constituid disti regni nostri (favente deo) contigerint ordinari super negotiis predictis, i pro quibusdam arduis & urgentibus negotiis nos, statum, & desensionem regni nostri Anglie & Ecclesia Anglicana concernentibus, which are rehearsed before in the writ.

2 E.3. Ca.3. Rot.Par 6 E.3. nu.r. 13 E.3. nu.2.14 E.3.nu.2. 15 E.3.nu.z. 17 E.z.nu.3. 18 E 3.nu. 2. 20 E.3.nu.1. 25 E.3.ftat.1. nu. 58. 25 E.3. ftat. 3. nu. 5. &c. Privy coat or Armour. Games or plays. Rot. Par. Anno 13 E.3.nu.5.& 8. * See hereafter pa.

7 E.z. Stat. De de-

fensione portland.

Lex & confuctudo Parliamenti.

And as every Court of Justice hath laws and customes for its direction, some

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by the Common law, some by the Civill and Canon law, some by peculiar lawes and cultomes, tc. So the High Court of Parliament Suis propiis legibus & consuctudinibus subsistie. It is " lex & consuctudo Parliamenti, that all weighte matters in any Parliament moved concerning the Peers of the Realm,02 Commons in parliament affembled, ought to be determined, adjudged, and discussed by the course of the warliament, and not by the Civil law, not yet by the Common laws of this Realmufed in more inferiour Courts, which was fo declared to be fecundum legem & confuetudinem Parliamenti, concerning the Beers of the Realm, by the Bing and all the Lords Spirituall and Temporall; and the like pari ratione is for the Commons for any thing mored or done in the House of Commons : and the rather, for that by another law and cultome of Warliament, the Ling cannot take notice of any thing faid og done in the Boufe of Commons, but by the report of the House of Commons : and every member of the Parliament hath a judiciall place, and can be no witnedle. And this is the reason that Judges ought not to give any opinion of a matter of Barliament, be: cause it is not to be decided by the common laws, but secundum legem ad conbecodinem Parliamenti : and to the Judges in divers parliaments have confelled. And some hold, that every offence committed in any Court punishable by that Court, muft be puniffed (proceeding criminally) in the fame Court, or in some higher, and not in any inferiour Court, and the Court of Parliament bath

Apon his petition erhibited to the King, wherein the question was, whether the power which he had raised was High Treason, at. which petition (saith the King) let be delivered to the Instices by them to be considered. Thereupon the Loids made protestation, that the order thereof belonged to them, which was to them allowed, and they resolved it to be no

treafon.

And because we have a case in 3 E.3.19. concerning the law and custome of parliament, we have thought good to set down the Record of that case De verbo in verbum, and then to eramine the report of the said case, and the opinion there belivered, wherein we shall desire the learned to consider well the statute of 5 R.2: star.2.cap.4. and thereupon to consider what (as that statute speaketh) hath been done of old times, ac. And how that Ac saith done, and not said,

I Ohannes Episcopus Winton in misericordia pro pluribus defaltis. Ide Iohannes Episcopus attachiat' fuit ad respond' Domino Regi, de eo quare cum in Parliamento Regis apud nova Sarū nuper tent' per ipsum Dominu Regem inhibitum fuisset, ne quis ad dictum Parliamentum summonitus ab eodem recederet sine licenc' Regis: Idem Episcopus durante Parliamento pradict. ab eodem sine licentia Regis recessit in Regis contemptum manifestum, contra inhibitionem Regis supradictam. Et unde idem Dominus Rex per Adam de Fincham, qui sequitur pro eo, dicit, quod pradictus sobannes Episcopus fecit ei transgress. Contemptum pradict. Coc. in contempt. Regis mille librarum. Et hoc offert verificare pro Domino Rege; Coc.

Et prædictus Episcopus in propria persona sua venit, & defendit omnem contemptum & transgress. & quicquid, &c. & dicit, quod ipse est unus de paribus regni, & Prælatus sacros. Ecclesiæ, & eis in est venire ad Parliamentum Domini Regis per summonitione & pro voluntate ipsius Domini Regis cum sibi placuerit, * Et dicit, quòd si quis

Ista lex ab omnibus est quarenda, a multis ignorata, a paucis cognita. Fleta lib.a.cap.2.

*Kor. Par. 1 1 R,2 nu. 7. See the first part

of the Institutes. Sect. 3. Verb. En la ley. Rot. Parl 2 H 4.

Rot. Parl. 3 H.6. In le Counce de Marshalls case. Rot. Par. 27 H.6. nu. 18.the Earle of Arundels case. Rot. Parl. 31 H.6 nu. 26, 17, 28. Banu 26, 17, 28. Banu

ron I horps case.

5 H.4. nu.22.
The Barl of Northumberlands
cafe.
Vid. Rot. Parl.
9 H.4. Indemnity
des Seigniors &
Commons.

Paich. 3 E. 3 coram Rege Ror. 9. in Dorf. Southr. Note, that this was by Writ Originall.

The Declaration.

The Plea of the Bishop to the jupidiction of the Court.

Nota hoc.

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eorum deliquerit erga Dominum Regem in Parliamento aliquo, in Parliamento debet corrigi & emendari, & non alibi in minor' Cur' quam in Parliamento: per quod non intendit, quod Dominus Rex velit in cur' bic de hujusmodi transgr. & contempt. factis in Parliamento responderi, &c. Et super hoc datus est eis dies coram Rege à die Sancta Trin, in quindecem dies ubicung; &c. salvis rationibus. Ad quem diem præd. Ebiscopus venit in propria persona sua, & datus est ei dies coram domino Re. ge à die Sancti Mich. in 15 dies ubicung; &c. in eodem statu quo num &c. salvis rationibus suis, &c. Ad quem diem venit prædict. Adam qui sequitur, &c. Et similiter prædictus Episcopus in propria persona sua. Et prædictus Adam pro prædicto Domino Rege dicit, quod cum placeatei Parliamentum suum tenere pro utilitate regni sui de regali potestate sua facit illud summoneri ubi & quando, &c. pro voluntate sua, & etiam facit prohiberi existentibus tunc ad Parliamentum, ne quis eorum abinde recedat contra prohibitionem suam, &c. absa licentia, &c. Et si quis eo. rum abinde recedat contra prohibitionem, &c. in contempt. regis, &c. be. ne liceat ipsi Domino Regi sumere sectam erga hujusmodi delinquentes in qua curia placeat sibi, &c. Et ex quo Dominus Rex pro voluntate sua Parliamenta sua tenet, &c. petit judicium pro ipso domino rege, si adem Dominus Rex duci debeat, seu compelli ad prosequend' in hac parte alibi contra voluntatem suam, &c.

Th's is the allegation of the Kings Attorny.

The B.maintains his former plea to the jurisdiction.

Et prædictus Episcopus dicit ut prius, quòd cum aliquis deliqueritin Parliamento, ibidem debet corrigi & emendari, &c. & licet aliquis summonitus esset veniendi ad Parliamentum, & non venisset ibidem, debet puniri, per quod non intendit, quod dominus rex velit alibi responderi quam in Parliamento, &c. Et super hoc datus est eis dies ufg, in Cro. Animarum ubicunque, &c. in eodem statu quo nunc, &c. Ad quem diem venit tam prædict. Adam, qui sequitur pro domino rege, quam prædict. Episcopus in propria persona sua. Et datus est eis dies coram domino rege in Octab. Sancti Hilarii ubicung, &c. falvis rationibus suis, &c. Ad quem diem prædict. Episcopus venit, & datus est ei dies ulterius coram domino rege in Octab. Pur. beata Maria ubicung, &c. Ad quem diem venit tam prædictus Episcopus, quam Iohannes de Lincoln' qui sequitur pro domino rege, & datus est eis dies ulterius coram domino rege à die Paschæ in quinque septimanas ubicung, &c. Salvis rationibus, &c. Ad quem diem venit tam præd. Episcopus in propria persona sua, quam prædict. Iohannes de Lincoln, qui sequitur pro dicto domino rege, &c. Et datus est eis dies ulterius a die Sancti Michaelis in 15 dies ubicung; &c. salvis sibi rationibus suis hinc in dicend' &c.

Cap. 1. The High Court of Parliament.

And this is all that is in the Record, whereby it appeareth that the plea of the Billop to the Burisdiction of the Court after Dibers dayes giben did fand, and mas never over-ruled agreeably to the faid resolutions in somer times, that Judges were not to determine matters concerning the Parliament, as is aforefaid. Louching the report of the faid cafe, thus far forth it agreeth, that this contempt cannot be punithed in any other Court then in the Kings Bench : fo as the question is only for that Court. It appeareth that the reporter never fain the faid Record, only took it by the care of that which was spoken in Court (a bangerous kind of reporting, and lubjed to many miffakings, for felbome or neber the right case is put) as in this case it fell out. For first, where the Record faith, that the Parliament was holden at Saroms the report is of a Parliament holden at Salop. 2. The Report faith, that John 13. of Winchester was arraigned, which implieth that he was indiced, ac. where he was fued by originall Writ. 3. The Inhibition made by the King alledged in the Record, is not in the Report. 4. Concerning the Sudden opinion of Scrope in this Report: 180 his opinion the Parliament it felfe could not have punished this contempt; for he faith, Ceux q font Judges de Parliament, sont judges de lour Piers, mes le Roy nad my pier in son terre demesn, pur q il ne poet p eux estre judge, donques ailors que cy ne poet eftre judge, whereas without question the Barliament might have punithed this contempt : and concludeth with a rule at the Common law, that the Ling may fue in what Court it pleaseth him. But matters of Barlia: ment (as hath been often faid) are not to be ruled by the Common law: and it feemeth that the rest of the Judges were against Scrope, for the plea was never over-ruled, as by the Record it appeareth.

Vide per Indictamenta Termino Paschæ 1 & 2 Ph. & Mar. eoram Rege Rot. 48. Informations preferred by the Attorney Generall against 39 of the Bouse of Commons for departing without license contrary to the Bings Inhibition in the beginning of the Parliament; whereof 6 being timozous Burgeffes ad redimendam vexationem submitted themselves to their fines, but whether they mid any, or very small, we have not yet found. And * Edmond Plowden the Mich. 3 & 4 Ph. learned Lawyer pleaded, that he remained continually from the beginning to the & Mar. Rot. 36. end of the Parliament, and took a Travers full of pregnancy : and after his inter Plac. Regis

plea was fine die per demise le Roign.

If offences done in Parliament might have been punished elsewhere, it shall be intended that at some time it would have been put in ure. Vid. the first part of

the Institutes. Sect. 108.

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Pow the faid Informations Anno 1 & 2 Ph. & Mar. against 39 of the House of Commons follow in these words. Pasch. I & 2 Ph. & Mar. Regis & Regine. Midd. J. Memorand' quod Edwardus Griffyn ar' Attornat' do- Edw. Griffin. min. regis & regina generalis, qui pro eisdem domino rege & domina regina sequitur, venit hic in Cur' dictoru dnorum regis & regina coram spsis rege et regina apud Westm' die Sabbathi proxim' post quind' Pasch. isto eodem Termino, & dat (ur' hic intelligi & informari. Quòd cum ad parliamentu dominoru regis & reginæ nunc tent' apud West' Annis regnorum suorum primo & secundo inhibitum suit per ipsos dominum re- Inhibitum suit. gem et dominam reginam in eodem parliamento, quod nullus ad idem parliament' summonitus, & ibidem interessens, ab eodem parliamento absque speciali licentia dictoru dominoru regis et reginæ, et (ur' parliament' prædiet recederet, seu seinssum aliquo modo absentaret. Quidam tamen Thoin com' Oxon' ar' Henricus Cary de gent' Richardus Warde de in com' ar' Edmund. Plowden

& Reginz.

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de Tybmershe in com. Berks armiger. Henricus Chiverton de ar. Robertus Browne de in com. Iohannes Courke de com. Iohannes Melhewes Iohannes Pethebrige de in com. com. Iohan. Courtney de in com. Radul phus Michel de in com. Richardus Brasey de Thomas Mathew de in com. in com. Thomas Maffye de armig'. Petrus in com. in com. Frechwell de miles. Henricus Vernon de Sydbery in com, in com. Derby armig. Willielmus Moore de villa Derb. in com. Derb. gen. Willielmus Banibrigge de Iohannes Eveleigh de in com. gen. Nich. Adamps de Dartmouth, alias Clifton Harnys in com. Devon gen. Richardus Phelipps de ar. Anthonius Dylvington de in com. in com. Andreas Hoorde de Christopherus Hoell de in com. in com. Dors. gen. Iohannes Mannocke de Iohannes Hamond de Thomas Phelipps de in com. in com. Willielmus Randall junior, Iohannes Phelipps de in com. Iohannes Moyne de in com. Hugo Smyth in com. de gen. Rogerns Gerrard de in com. de in com. gen. Ragen. Thomas Moore de Hambled. dulphus Scroope de in com. in com. Buck. gen. Willielmus Reade de in com. ar. Henricus ar. Ioh. Maynard de Villa Sancti Albani, Mannock de in com. in com. Hertf. ar. Nich. Debden de gen. & Philippus in com. Tirwhyt de in com. ar' qui summoniti fuerunt ad dictum Parliamentum, & in eodem Parliamento comparuerunt, ac ibidem interfuerunt mandat' et inhibitionem dominorum regis et reginæ supradict' par vi pendentes, ac statum reipublica hujus regni Anglia minime curantes aut ponderantes postea scil. 12 die Ianuarii Annis regnoru dictoru dominoru regu et reginæ nunc primo et secundo supradictis, et durante parliamento prædi-Eto ab eodem parliamento sine licentia dictorum dominorum regis et reginæ et cur' suæ prædict' contemptuose recesserunt in ipsorum dominorum regis et reginæ ac mandat' et inhibitionis suorum prædict' curiæg prædict. contempt manifestum, ac in magnum reipublica statum bujus regni Anglia detriment, nec non in perniciosum exemplum omnium aliorum, &c. Vnde idem Attornatus dominorum regis et regine petit advisamentum cur' in pramis. et debit' legis process. vers. eosdem Thomam Denton, Henricum Cary, Richardum Warde, Edm. Plowden, Henricum Chiverton, Robertum Browne, Ioh. Courk, Ioh. Pethybridge, Ioh. Melhewes, Ioh. Courtney, Radulph. Michell, Thomam Mathewe, Richardum Brasey, Thomam Massye, Petrum Frechwell, Henricum Vernon, Will. Moore, Will. Banibrigge, Ich. Eveleigh, Nich. Adamps, Richardum Phelipps, Anthonium Dilvington, Andream Hoorde, Christopherum Hoell, Iohannem Mannock

Mandatum & Inhibitionem.

The High Court of Parliament.

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Mannock, Thomam Phelipps, Iohan. Hamond, Ioh. Phelipps, Willielmum Randall, Ioh. Moyne, Hugonem Smith, Rogerum Gerrard, Radulphum Scroope, Tho. Moore, Will. Read, Henricum Mannock, Johan. Maynard, Nicholaum Debden, & Phil. Tyrubytt fieri ad respondend.

domino regi, & domina regina de contempt' pradict. &c.

Et modo scil. die Veneris prox post Crast animarum isto eodem Termino coram domin. rege et dna regina apud West ven' pradict Edm. Plowden plac. regis & reper Andream Tuffer Attornatu fuum : & habit audit Informationis predicta dic, quod ipfe non intendit quod dominus rex & domina regina nunc iplum Edmun' pro premissis vel aliquo premissorii impetere seu occasionare velint aut debent: Quia dicit quod ipse ad dict' Parliament in informatione pradict specificat interfuit & prasens fuit, ac in eodem Parliamento continue remansit, viz. à principio ipsius Parliamenti usq ad finem ejusdem. Abía, boc quod ipfe idem Edmund. Plowden dicto 12 die Ianuarii, An. primo & secundo supradict durant Parliament prædict ab eode Parliament sine licentia dictorum dominorum regis & regina, & cur' sua pradict' contemptuose recessit in ipsorum dominorum regis & regina ac mandat' G'inhibitionis suoru prædict' curieg præd contempt manifest, ac in magnum reipublica stat hujus regni Anglia detriment, nec non in perniciosum exemplum omnium alioru modo & forma prout per informac prædict vers. eum supponitur. Et hoc paratus est verificare prout cur. &c. unde pet' judicium: & quod ipse de præmiss. per cur' hic dimittatur, &c.

Midd. Ve. fac Thomam Constable de Grimbsbye in com. Lincoln. Ar. in com. Francis. Farnham de Querne in com. Leic. Hen. Leigh, de ar. Li. lo. Mic. 2 & 3 Ph Regis & Mar. Reginæ. Ioh. Holcroft. Sen. milit. Will. Bromley de in com. ar. Tho. Somerset ar. Georg. Ferrers de Markyat' in com. Hertf.gen. Nich. Powtrell de Exincton in com. Nott ar. F. Hill. 2 & 4 Ph. & Mar. Tho. in com' Kanc' milit. Tho. Waters de in com. Tylcock de civit' Oxon' gen Li. lo. Hil. 2 & 3 Ph. & Mar. Tho. Balkden de Wechyngleigh in com. Sur. milit.Li. lo. Mic. 2 et 3 Ph. et Mar. Math. Cradock de villa Staff. gen. Li. lo. Hil 2 & 3 Ph. & Mar. Georgium Lye de villa Salop. gen. Cess. process. per mandat' Attornat' dominorum regis & reginæ, quia ulterius prosequi non vult verl, ipsum Geo. Lye. Ioh. Hoord de Bridgenorth in com. Salop. gen. F. Mic. 5 & 6 Ph. & Mar. Ioh. Alsop de villa de Ludlowe in com. Salop. gen. Wil. Laurence de Civ. Winton. gen. Li. lo. Mich. 2 & 3 Ph. & Mar. Robert. Hudson de Civ. Winton gen. Li. lo. ut antea. Edm. Rowse de Donwich in com' Suff. mil. Rob. Coppinge de Donwich in com' Suff. ar. Ioh. Harman de Hospicio dom. regis & dom. reginæ gen. Will. (rowch de Wellowe in com' Somers. ar. Tho. Lewes de villa de Wels in

Mic. 3 & 4 Ph. & Mar.Ro. 36. inter

Nota, the pregnancy of this tra-Sine die per demise le Royne.

Pcr de armis 1 & 1 Ph.& Mar. Rot.48.

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com' Somerf. gen. Li. lo. Hil. 2 & 3 Ph. & Mar. Wil. Godwyn de Wels præd in com' Somers.gen. F.Mich. 3 & 4 Ph. & Mar. Ioh. Ashburnham de Ashburnham in com' Suff. ar. Li.lo. Mic. 2 & 3 Ph. & Mar. Walt. Reyncum de Civ' (icest' in com' Suff. gen. Li.lo. Tr. 2 & 3 Ph. & Mar. Wil. Moodyere de Slindon in com' Suff. gen. F. Tr. 4 & 5 Ph. & Mar. Ioh. Roberts de in com' Suff. gen. utlegat. Go. Wil. Pellet de Steininge in com' Suff. gen. F. Pasch. 2 & 3 Ph. & Mar. Rich. Bowyer de Arundell in com' Suff. gen. Li. lo. Mic. 3 & 4 P. & M. Will. Danby de in com. Westmerl. gen. Rob. Griffyth de Civ' Nova Sarum in com Wilis, Draper. Li. lo. ut supra. Ioh. Hooper de Civ. Novæ Saru in com' Wilts, gen. Li. lo. Mic. 2 & 3 Ph. & Mar. Wil. Clark de in com. Curtys de Bradstock in com' Wilts gen. Li. lo. ut supra, &c. Tho. Hil de Denyses in com. Wilts gen. F. Hil. 2 & 3 Ph. & Mar. Edw. Vmpton de London gen. Li. lo. Mic. 2 & 3 Ph. & Mar. Tho. Parker de Ich. Reade de London gen. F. Hil. 2 & 3 Ph. & Mar. Arth. A. len de civ' Bristol Merch. Egid. Payne de civ' Bristol.gen. Wil. Hamp. Thire de London gen. Li. lo. Mic. 3 & 4 Ph. & Mar. & Pet. Taylor de Marlborow in com' Wilts, Taylor. Li.lo. Mic. 3 & 4 Ph. & Mar. Resp. Regi de quibusdam transgres. & contempt. unde impetit sunt.

Cess. process. vers. Georgium Lye. Sinc die per demise le Royne.

Per cont'rott' de Annis 1 & 2 Ph.& Mar.Rot. 48.

Mid. Ve. fac' cr' Trin. Edw. Braxden de civ' Wigorn. gen. Georg. Newport de Droitwich in com' Wigorn. gen. Wil. Wigstone de Wolstone in com' War. mil. Li lo. Mic. 2 & 3 Ph. & Mar. Radulph. Browne de Woodlowes in com' War. gen. Li. lo. Mic. 3 et 4. Ph. et Mar. Iohan. Harforde de civ Covent. gen. Cess. process. &c. Nich. Fryshe de in com' Rich. Rayleton de in com. Marc. Wyrley de civ. Lichfield, gen. Walt. Iobson de villa de Kingston super Hull. Iac. Brenne de com. gen. Ioh. Payton de in com. Kanc. ar. Ioh. Cheney de Kanc. armigerum. Willielmum Oxenden de in com. Kanc. Armigerum. Tho. Keys de in com. Kanc. gen. Wil. Hannington de in com. Kanc. Ioh. Tyffars de Nich. Crypse de in com. in com. Kanc.ar. Edw. Herbert de Stawley in com. Salop ar. F. Hil. 4 et 5 præd. Ph. et Mar. &c. Rich. Lloyde de in com. Kanc. gen. Ioh. de Knylle ar. Hen. Iones de in com. mil. Meredith Gaines de in com. gen. & Rich. Bulkeley de in com. mil. Resp. regi de quibusdă transgr' & contempt. unde impetit' sunt. Et postea, scil. Termino Janet. Trin. Annis 4 5 9 Ph. et Mar. pro eo quod sufficienter hic in cur testatu est quod prædict. Ioh. Harford habuit licentiam recedere à Parliamento. co c. Ideo Ed w. Griffyn ar. Attornat. dominor u regis co regina generalis qui pro ipfis rege & regina in hac parte sequitur, dicit quod ipse ulterius in hac parte vers. præfatum Ioh. Harford prosequi non vult. Ideo ceff. hic proceff. vers.eum omnino, &c. And

Non prof. verf. Harford tantum.

Sine die per demife le Royne. D.I.

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And to deal clearly, this is all that we can find concerning this matter. Thus you may observe, that the poor Commons, Dembers of the Parliament, in diebus illis, had no great joy to continue in Parliament, but Departed. Wit now to proceed.

Of Writs of Error in Parliament.

If a Judgement be given in the Kings Bench either upon a wit of Errot. 0; otherwife, the party grieved may upon a petition of Right made to the Bing in Englith, os in French (which is not ex debito Jufficia, but fo; becency, for that the former judgement was given Coram Rege) and his answer thereunto, fiat Jufticia, habe a wait of Erroz Directed to the Chief Buffice of the Bings Bench for removing of the Record in prafens Parliamentumand thereupon the Roll it felf, and a transcript in parchment is to be brought by the Thief Auftice of the Bings Bench into the Loads Boufe in Parliament: and after the transcript is examined by the Court with the Record, the Chief Inflice carrieth back the Record it felf into the Bings Beneh, and then the Plaintife is to affign the errors, and thereupon to have a Scire fac' again& the adverse party, returnable either in that Parliament, og the nert; and the moreeding thereupon thall be super tenorem recordi, & non super recordum. All this, and many more excellent matters of learning are contained in the Records following; whereof a light touch is hereafter given, the Records at large being too long here to be rehearled. And the proceeding upon the writ of Erro; is only before the Lords in the Upper House, Secundam legem & consuctudinem Parliamenti.

Queritur Guilielmus de Valencia contra Concilium regis, s. Justic' Coram Rot. Par. Post Rege, pro injusto judicio tangen' allocationem Dionisia filia Guilielmi de monte Caniso ut hared': sed dominus Rex ratum habet corum factum, & ju-

dicium redditum est contra Guilielmum de Valencia.

If a Pobleman had been erroneoully attainted of Treason, te, he might have Rot. Par. 4.E. ?. had his writ of Error in Parliament, not with anding the fatute of 32 H.S. ca,20, for that muft be intended of lawfull records of Attainder: but if the Attamper be effablished by Authority of Parliament, then be must erhibite his petition in Parliament to be restored of grace. But now by the statute of 29 El.ca.2. it is ordained, that no record of Attainder of Bigh Treason that then was, for the which the party attainted had been executed for the same treason hould be reversed for error: but this extendeth only to Attainders of High Treason, and not to any Attainder of High treason after that Act, not to any High treason before, for the which the party was not executed.

The Prior and Covent of Pontague by their petition declare, that Richard Seimour had obtained an erroneous judgement against the faid Paioz in the Kings Bench, upon a judgement given in the Common place upon a fine for the Pannoz of Titenhull in the County of Somerfet, sc. And the principall erro; was for denying of aid of the King where it was grantable, and that hanging a writ of Right, the faid Richard sued a Scire fac. And commands ment was given to the Chanceloz of England, that he thould make a wait of polfellion and feifon to be had, and other processe upon that judgment to be made:

In this Record you hall observe excellent pleading.

Erro; in Parliament upon a judgment in an Appeal of death upon an ac-

quitall of the Defendant, and inquiry of the Abettozs; tc.

And that we may observe it once for all) when one sueth in Parliament to reverse a judgement in the Kings Bench, he theweth in his bill which he erhibiteth to the Parliament some error or errors, whereupon be prayeth a Scire facias

The Bilhop of Porwich theweth that an erroneous judgment was given Rot. Par. 40 E.3. against him in the Common place for the Archdeaconry of Porwich belong. nu. 48. ing to his presentation, and prayed that those errors might be heard, and redressed

The House of the Lords is a di-Rind Court for many purpoles. 22 E. 3.fo.3. Regift.17. Lib. Intr. Raft. 184.

festum Sanai Hil. Anno 18 E. 1. Rot. 8.

nu.13. Rich.Barl of Arundels cafe. 1b. 28 E.3.nu. 11, 12. Moftimer Earl of Marches cale See Pafc 28 8.3. Coram Rege Rot. 37 Wigorn. the fame cate. 33 H.S.ca. 20. 19 Fliz.ca. 1. Rot, Par. 7 R. 3. nu.20. 8 R.3. nu.14.

Rot Par. 13 R. 2. nu. 15. Sir Thomas Methams

there: whereunto animer was made that errors, by the law, in the Common place are to be corrected in the kings Bench, and of the Kings Bonch in the Barliament and not otherwife.

1 R. 2, nu. 28,29. 2 R. 2, nu. 31. A wait of Erroz in Parliament botinem William Mountacute Carl of Sarum , and Roger of Postimer Carl of Pard

of a judgment in the Bings Bench.

The Dean and Chapter of Lichfeild recovered in the Common place against the Brioz of Reimport Pannell: the Prioz by writ of Erroz reverleth the subgment in the Bings Bench: the Dean and Chapter by wait of Great in Barliament reverleth the judgment in the Bings Bench, and affirmeth the sudgment in the Common place, and a commandment given to the Change loz, that the judgement in the Common place be executed by processe by bimto be made.

b John Sheppy complains of a judgement in the Kings Bench in a with

Grroz.

e Grot in Barliament between William Mountacute Carl of Salisburg and Roger de Mortimer Carl of March, for the Cattle, Town, and honer of Denbeigh, ec. upon a judgment given in the Kings Bench, and had a Scine

fac' returnable the nort Parliament.

William Seward alias Cheddre complaineth, that where he by that name was prefented and induded to the Barfonage of Wotton Ander Egge in the County of Blouc', and thereof continued the possession by the space of four pears, untill the king by untrue suggestion presented Sir John Dawuy to the Barfonage of Underheage in that County, where there was no fuch Bar fonage called Anderhegge, as the faid William pleaded in a Quare Impedie brought by the King in the Kings Bench; upon which writ the King recove red by the default the Parlonage of Anderhegge and not Under Egge, whereby upon a wait fent to the Bithop of Worcefter, the faid William was put from his Parlonage of Ander Egge: for which militaking and error, the judament for the faid John in full Parliament was reversed, and a writ awarded to the faid Bithop for the restitution of the faid William.

The Record and Audgment given in the Kings Bench for the King. & gainst Edmond Baffer for certain lands, sc. was for bibers errors reversed in Parliament, and restitution of the premises with the mean profits restora

to the faid Edmond.

In erro; in Warliament between Roger Devncourt, and Ralph de Adderive for a judgement given in the Kings Bench for the Mannor of Antive in Com' Warr', Sir William Gascoign Thief Juftice belibered a copp of the Recold and processe, word for word, under his hand, ac. to the Clerk of the Parliament, ac.

In error in Warliament between Richard Quatermayns and William Hore, ac. upon an erroneous judgement given in the kings Bench in an action of tref paffe, and the Plaintif entred his Atturny of Record to proceed therein.

John Beauchamp Lozd Abergaveny complained in Barliament upon an er roneous judgment given upon a verdid in the Kings Bench in a Scire fac upon a recognisance in the Chancery for keeping the peace. In the Record inhereof are excellent points of learning, as well touching the recognifance, as the processe, and iffue.

Erroz in Parliament, Pafch . 31 H.6. upon a judgment giben in an Affik in the Mings Bench, & intratur super marginem, Rot. mittitur in Parliamen-

tum per Johannem Fortescue Termino Paschæ anno 31 H.6.

And to omit many others, to descend to some of latter times, Richard Whalley recovered in Affile by verdid against divers tenants, who brought a writ of Error in the Kings Bench, where the judgment in the Affife was affirmed, the tenant complained in Parliament for error in the Kings Bench.

Erroz in Parliament upon complaint of Sir Christopher Heydon Bnight of a judgment in a wait of Erroz in the Kings banch, between the faid bir Christopher Plaintif, and Roger Godsalve and others Defendants, upon a judge

a Ro. Par. 15 R. 2. nu.32.& 18 R. 1. nu.11,12,13,14, 15. This Parliam. of 18 R.z. is not mentioned in the printed book, becaule no Act palfed at this Parl :ament. See 2 H.4. nu.40.

6 Ro. Par. 15 R. 2. uu.22. c 21 R.2.nu.25. 2 H.4.nu, 13.

d Rot. Par. I H.4. nu gi.

Rot. Par. 15 R.2. nu.24. & 2 H.4. nu.38.

5 H.4.nu. 40.

Rot. Par. 3 H.s. nu 19.

Rot. Par. 10 H.6. nu.51.& 11 H.6. RU.49.

Rot. Par. 31 H.6.

Rot, Par. 23 El. Dier 23 El.f.373.

Rot. Par. 12 Jac.

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ment given for the faid Roger, tc. against the faid Sir Christopher in an Affile before Justices of Allife, wherein the judgment in the Affile was affirmed in the kings bench, whereof the complaint was made, fed non pravaluit.

A Deer of the Realm being indiaed of treafon, or felony, or milprifion of Incafe of treatreason, may be arraigned thereof in Parliament , a Lood Stelvard being apminted, and then the Lords Spirituall thall make a Procurator for them; and the Lords, as Peers of the Realm, during the Partiament are Judges, whether the offence be treason, tc. that is supposed to be committed by any Deer of the Realm, and not the Buftices, as it appeareth in the Carl of Porthumberlande cafe, Rot. Parl. 5 H.4. Du. 11,12. See in the Barliament holden 21 R.2. fib ritulo Pl. Corona, in a Roll annexed, tc. befoze the Steward of England and other Logos Memporall, Richard Carl of Arundels cafe. Ror. Parl. 31 H.6. pu. 49. Thomas Carl of Debon was arraigned of Bigh Treason before Humphry Duke of Buck' Steward of England hac vice, and was acquited by bis meers, 10 E.4.fo.6.b. Stanf. Pl. Coron. 15 3.b.

fon, &c.theLords Spirituall make their Procters. The Peers are Judges of treason, & c.during the Parliament, &c. Ror. Par. 5 H.4. nu. 11,12. Rot. Par. 21 R.2. Subtit. Plac Coronz,&c. Rot. Par. 31 H 6. nv.49.

Of Indicature.

pow other both require to treat of other matters of Judicature in the Lords house, and of matters of Judicature in the house of Commons. And it is to be known, that the Lords in their House have power of Judicature, mo the Commons in their House have power of Budicature, and both Doules together have power of Judicature: but the handling hereof accorbing to the worth and weight of the matter would require a whole Treatife of it felf; and to fay the truth, it is best understood by reading the Judgments and Records of Parliament at large, and the Journals of the Boule of the Lozds, and the book of the Clerk of the Boule of Commons, which is a Record, as it is affirmed by Act of Parliament in anno 6 H. 8.ca. 16. mices, Barones &

* Vide Placita in Parliam, Anno 33 E. I.Rot.33. Nicholaus Segrave adjudge per Pralatos, Co. alios de concilio.

At the Parliament at York anno 12 E. 2. Confideratum eft per Prelator, Comites, Barones, & Communicatem Anglie. The Lord Awdeleys case. At the Parl. at Westm' 15 E. 2. Hugh le pier adjudge per les seignours & Commons.
Rot. Parl. 42 E. 3, nu. 20. Sir John at Lee adjudged by the Lords and Commons. Rot. Par. 50 E. 3. 2. parte, A pardon to the Lord Latimer of a Judgement in Parliament, Rot. Parl. 50 E.3.nu.34. Lo. Nevils cafe.

See Rot, Claus. 1 R.2.m.5.8.38,39. A tresage Councell le Roy, les Seigniors & Commons,&c. Rot. Parl. 1 H.4. nu. 79. it is no Act of Parliament, but an Dibinance, and therefore bindeth not in fucceffion. Rot. Par. H. 5. Du. 1 3. @rros alligned that the Lords gave Judgement without petition or allent of the Commons. Rot Par. 28 H.6. nu. 19. 4 many others in the reign of Bing H.6. Bing E. 4.

And of latter times, fee divers notable judgements, at the profecution of the Commons, by the Lozds at the Parliaments holden 18 and 21 Jac, Regis, a. gainft Sir Giles Mompesson, Str John Michel , Viscount S. Albone Load Chancelog of England, the Earl of D. Lord Treasurer of England, where. by the due proceeding of Judicature in such cases doth appear.

Thomas Long gave the Maio? of Westbury four pound to be eleded Bur. In the book of gelle, who thereupon was elected. This matter was examined and adjudged the house of Coin the Bouse of Commons, Secundum legem & consuetudinem Parliamenti, liament holden and the Paio: fined and imprisoned, and Long removed : for this corrupt dealing was to poplon the very fountain it felf.

Arthur Hall a Member of the House of Commons for publishing and bisco: 13 El.ib.fo. 14. bering the conferences of the Boule, and writing a book to the dilhonor of the Popham Acturny House, was upon due examination, secundum legem & consuerudinem Parlia. generall Speaker. menti, adjudged by the Boule of Commons to be committed to the Tower for fir months, fined at five hunded marks, and expelled the House.

Muncton froke William Johnson a Burgeffe of B, returned into the Chance. Ib. a Aprilis. rpof Record, for which upon due examination in the Boule of Commons, it Vid.11 H.6 c.11. mas refolted that fecundum legem & confuetudinem Parliamenti, every man 5 H.4.ca.6. must take notice of all the Dembers of the House returned of Record at his C 2 perilla

mons at the Par-8 Eliz. Ownfloe Speaker.fo.19.

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See Rot Parl. 8 H.6.nu.57.

perill: but otherwise it is of the ferbant of any of the Members of the House. for there he that Arineth, sc. must bave notice. And the Boule adjudged Man. cton to the Tower, sc.

If any Lord of Parliament, Spirituall or Temporall, have committed and oppression, bribery, extertion, or the like, the House of Commons, being the generall Inquifitors of the Realm (comming out of all the parts thereof) map examine the fame, and if they find by the Wote of the Poule, the charge to be true. then they fransmit the same to the Lords with the witnesses and proofs.

Priviledge of Parliament.

Vide Inter leges Edw. Confest c.3.

And now after Judicature, let us speak somewhat of priviledge of Bartis. ment : Experience hath made the priviledges of Parliaments well known to Parliament men, pet will we speak somewhat thereof.

Petitiones cora domino regead Parliament' post festum Sancti Mich. Anno 18 E. I.fo.7.

Magister militiæ Templi petit quòd distringat (catalla unius de concilio) tempote Parliamenti pro redditu unius domus in London: Rex responder, non videtur honestum, quod illi de concilio suo distringantur tempore Parliamenti, sed alio tempore, &c. Whereby it appeareth that a Member of the Parliament ha have priviledge of Parliament, not only for his fervants as is aforefair, but for his horses, ec. or other goods distreinable.

Plac' coram rege & ejus concilio ad Parliam. fuum post Festum San-cti Hil. Anno 18 E. 1.fol. 1. Vide Inf. 10 B.3. more hereof concerning ferving of a Citation.

Querela Comitis Cornubia, versus Bogonem de Clare & Priorem Sancta Trinitatis London, quod ipsi tempore Parliamenti ipsum comitem in medio aula Westm' ad procurationem ipsius Bogonis citaverunt, quod compareret comm Archiepiscopo Cantuar', &c. Ipse prior venit & Bogo similiter, & ponum se in gratiam, misericordiam, & voluntatem Regis de alto & basso, ob quod mandantur turri London: Postea venit dictus Bogo & sinem secit domino regi pro przedicta transgressione per duas mille marcas, &c. & quoad przedict' Comitem respondeat Comiti 1000.li. pro transgressione sibi fact, &c. & przdictus Prior mittitur ibide ad faciend' secundu quod Thesaurarius ei dicet ex parte dñi Regis. And yet the ferving of the faid titation did not arrest, or restrain his body

and the same priviledge holdeth in case of Sub pona, or other processe out of an Court of equity, Rex mandavit Justiciariis suis ad Assisas, Jurat', &c. capiend assignat' quod super

Anno 8 E.a.in Dorf.cl.8 E. 2. fedeant captioni corundem ubi Comites, Barones & alii summoniti ad Parlismensum Regis sunt partes, quamdin dictum Parliam, duraverit.

Ibid.m.33 & 12.

Rot. Parliam.

De non procedendo ad capiend' Affifas versus illos, qui ad Parliamentum Regis apud Eborum venerunt.

In Scacc' ex Ori. ginali de Anno 10E.3.Ro. 27.No. * That is, in Court of Parliament.

Rex omnibus balivis & fidelibus fuis ad quos-&c., Salutem, Sciatis, quòd cum curiæ nostræ in quibus * negotia regni nostri dedecantur ubiq; adeo liberæ sint & exempta, & à tempore quo non extat memoria libera & exempta fuerunt, quod nec aliqua forum ecclesiasticum concernentia in eisdem curiis nostris fieri fer exequi, nec aliqui casdem curias nostras ad aliqua forum ecclesiasticum contingentia faciendum vel exequendum ingredi debeant, vel consueverunt aliquiba temporibus retroactis, ac Magister Henrieus de Harewedon elericus, Edmundus de Lukenore & Johannes de Wedlingburgh de eo quod ipsi nuper in Cancellaria nostra in prasentia venerabilis Patris I. Cantuariensis Archiepiscopi Cancelfarii nostri quasdam citationes sive monitiones dilecto clerico nostro Johanni de Thoresby, nec non provocationes, appellationes & instrumenta publica super drationibus seu monitionibus prædictis in nostri concemptum & Corona nostra a Regiz dignitatis noftra prajudicium, & contra libertatem & exemptionem pradict'fecerant per inquisitionem in quam se inde in curia nostra coram dilecto Cancellario nostro & aliis de concilio nostro posuerant convicti fuissent & ea cocasione prisone nostre mancipati in eadem ad voluntatem nostram moratui. Nos de gratia nostra speciali ad requisirionem Philippæ Regina Anglia consortis nostræ charissimæ perdonavimus eisdem Henrico, Edmundo & Johanni impulonamentumprædictum; Ita tamen quod nobis satisfaciant de redemptione sua occasione pramisforum, & quod super citationibus, monitionibus, provocationi-

Citationes. This John de Thoresby was the Clerk of the Parliament.

bes appellationibus feu inftrumentis prædictis in diche cancellatia noftre fie fadis processum aliquem non faciant, nec quicquam quod in postri vel juris corona nostra prajudicium cedere possit attemptent vel attemptare saciant de catero quovis modo. In cujus, &cc. Teste Rege apud Turrim London 15 die Aprilis, ex originali de Anno 10 E.3. Rot.27. Not.

Brivilence of Barliament in informations for the bing generally the priviledge of Partiament do bold, unlede it be in three cales, viz, Areafon, Felony,

and the peace.

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Rot. Parl. Anno 17 E.4.nu.36. Vid. 21 E.4.fol-38,39. Rot. Parl Anno 8.H 6.nu.57. Vide infra. pa.

Of Statutes, or Acts of Parliament.

There is no Act of Parliament but must have the confent of the Loads, the Commons, and the Royall affent of the ling, and as it appeareth by A Records and our b Books whatfoever palleth in Parliament by this threefold confent, bath the force of an Act of Parliament.

The difference betimeen an Act of Parliament, and an Didinance in Barliament, is, for that the . Dedinance wanteth the threefold confent, and is ordain

ned by one of two of them.

a Vid.14 R.2. nu. 15. & 13 H.4 nu.25. 6 4 H.7.18.b.p tours les Justices. 7 H.7.14 & 16. 11 H. 7. 27. 2. Brook preroga-* tive 134.

Fortefeue fo. 20. cap. 18. Dier I Mar. 92. c Rot. Parl. 25 E. 3. nu. 16, &c. 39 E. 3. 12. 22 E. 3.3. H. 6. cap. 29. Dier 4 Mar. 144. 39 E.3.7. Thorp male errayft. Rot. Parl. 37 E.3.nu. 39. 1 R. 2mu. 36. diverfity between Acts of Parliament and Ordinances. 2 R.z.flar.z.nu.28.

d 3 have read of a refittution in blood, and of lands of one William de Lafenby d 13 H.4.00.20. by the king , by the affent of the Lords Spirituall , and Commons, (omitting the Loids Tempozall) this we hold is an Didinance, and no Ac of Barliament. And when the Clergy is omitted and the Ad made by the King, the Lords Temporall, and Commons. See the Rols of Partiament and authoris ties following, viz. Rot. Parl. Paich. e 15 E.z. the case of the Spencerses R.z. cap.3, in print. Dur Soveraigne Lord by the common confent of all the Lords Temporall, and at the petition of the Commons, ec. 7 R.2, cap. 1 2, accord. 11 R.2.m.9,10,11. See 1 H.g.c.7. f 21 R.2.nu.9. 2 10,6 H.6.nu.27.7 H.8. Kelw. 184, the opinion of the Juftices agreeable with the faid Acts of Parliament. And note the mutability in this particular case of the Spencers, of this bigh Court of Parliament. The judgement by Parliament in 15 E.2. against the Spencers, was in the same year by Act of Parliament repealed: that repeale was repealed by authority of Parliament in 1 E.3. that repeal of 1 E.3. was repealed by Ad of Parliament in 21 R. s. and that of 21 R. 2. was repealed by authority of Parlia: ment in 1 H.4. And to the judgement against the Spencers frandeth in toice.

e Repeal 1 E.3. cap. 2.ffar.1. 15 E.g.tit. Petition. F.z. See Rot. Pat. An. 1 H. 4. part 5. m.36. the Ifle of Man given to the King by the Lords Temporall and Commons. f Repeal. 1 H.4. cap. 3.

The division of AELs of Parliament.

Of Ads of Parliament some be introduced of a new law, and some be declaratory of the ancient law, and fome be of both kinds by addition of greater penals ties of the like. Againe, of Ads of Parliament, some be generall, and some be mivate and particular. All Acts of Parliament relate to the first day of Par, 33 H.6.fol 17. liament, if it be not otherwise provided by the Act.

The severall formes of Acts of Parliament.

In ancient time all Acts of Parliament were in form of Petitions. And for the severall forms of Aas of Maritament, see the Winces case in the 8 1Book of Reports. Pow for the reading, committing, amending, ingrofting, boting, and palling of Bils in either House, and touching conferences with the Lozds, and for the priviledge of any spember of either Houses, and of their ferbants more then hath been fait, they be fo ordinary and well known, and in fuch contimuall practice, as it were but expence of time to treat any more of them. And for that many times the Rols of the Warliament have not been truly ingroffed, at nu. 65.

Dier. 3 Mar. 131. 1.b.8.fo. 1. the Princes cafe. Concerning the ingroffing in Rols of Acts of Parliament. Rot. Parl. 7 H.4.

the request of the Commons certain of them are to be appointed, who should be at the ingrosting of the Rols of Parliament.

In former times Acts of Parliament were proclaimed by the Sheriffes.

Withen I read the case of Premunire in 39 E.3. upon the Catute of 27 E.2. of Provilors against the Bithop of Chichester, and observing that Gerjeant Cavendish of councell with the Bithop objected two things: First, that the At whereupon the Wirit was grounded, was no fatute. Secondly, that if it were Katute, it was never published in the County : whom Sir Robert Thorpe Thief Justice answered. Although proclamation be not made in the County, every one is bound to take notice of that which is done in Parliament: for as foon as the Parliament bath concluded any thing, the law intends, that every perfon hath notice thereof, for the Parliament represents the Body of the whole Realm: and therefore it is not requilite that any Proclamation be made, feeting the Statute took effect before. This gave me to understand, that albeit it was not required by law that statutes should be published in the County; yet seeing in those dayes and long after, the use of printing came not into this Realm; the use was (as it appeareth by Cavendishes speech) that they should be published in the Tounty, to the end that the Subjects might have expresse notice thereof, and not to be overtaken by an intendment in law, which gave me occasion to fearth and inquire how this ulage was, and how long it continued. And in the end I found, that at every Parliament the Ads that palled were transcribed into Parchwent, and by the Kings Wirit directed to the Sheriffe of every Countrol England, and commandement given to him, that all the faid statutes in all plan ces through his whole Bapliwick, as well within Franchife as without, where he should finde most fit, that he not only should proclaime them, but to see that they thould be firmely observed and kept. And the usage was to proclaim them at his County Court, ec. and there to keep the transcript of the Ads, that who to would, might reade or take copies thereof. And this Wirit was sometimen Latine and sometime in French, as in those dapes the statutes were enaced in Latin of in French. But an example of the one, and of the other will more illu-Arate this matter.

Edwardus Dei grat' Rex Angliæ & Franciæ, & Dominus Hiberniæ Vic' Norff. Salut. Quædam statuta p nos, Prælatos, Comites, Barones, & alios magnates ad Parliamentum nostrum tentum apad Eborum in Cro. Ascensionis ultim' præterit' ordinavimus & stabilivimus, prout sequitur, and rætite the severall statutes verbatim. And then the Wartt concludeth. Et ideo tibi præcipimus, quod statuta illa & omnes articulos in eisdem contentos in singulis locis in baliva tua, tam insta libertates, quam extra, ubi expedire videris, publice proclamari & * firmiter teneri & observari facias, Teste, & e.

Richard p la grace de Dieu Roy Dengliterre & de France, & Seigniour d'Ireland a nostre Viscount de Norst. Salut. Saches que al honeur de Dieu, & reverencede Saint Efglise & pur nurrer peace, unitie, & concord in touts parts deins nostre realme, le quel nous desirons must entirement, del assent des Prelats, Dukes, Counts & Barons de melme nostre realme, al instance & speciall request des Commons de nostre Realme assembles a nostre Parliament tenus a Westm. a la quins zim de S. Michael lan de nostre reigne primier avons fait ordeiner & stablier certaine statuts en amendment & relievement de mesme nostre Realme, & en la forme que sensuift. Primerment est assentus & establie, que saint Eglise eit & enjoy se couts les droitures, &c. rehearling all the statutes that passed at that Par liament. And the Warit concludeth thus. Et pur ceo vous mandons que touts les statuts faces crier & publier, & firmament tener p my vostre Baillie solong; la forme & tenor de icel, & ceo ne lesses en ascun manner. Done p testmoignants de nostre grand seale al Westm. le primier jour de Feverer lan de nostre reigne primer. And the like Writs continued untill the beginning of the reign of H.7. long time after printing within the reign of H.6. (as hath bin faid) came unto us.

John Moore. Printing was invented in Meath in Germany, Anno Domini 1441. and came to us in the raign of H. 6. See Bodin De Methodo historiz.li. 7. Vna ty-pographia cum omnibus omnium veterum inventis certare facile poteft. Polydor Virgil de invent. rerum lib. 2.60 p.7. Cardan. de varictate rerum lib. 3. cap.64.

At the Parl ament in Anno
10 E.3.
Nota, that the
Sheriffe thathath
Coffediam Comitatus, should see
the statues within his County to
be kept.
At the Parlia—
ment An, 1 R. 2.

Prorogation, Adjournment, Continuance, and what maketh a Session of Parliament.

The passing of any Bill or Bils by giving the Royall assent thereunto, or the giving any judgement in Parliament both not make a Sellion, but the Selfon both continue untill that Sellion be proroqued or diffolved : and this is ebis

bent by many prefidents in Parliament ancient and late.

The Parliament of 14 E. 3. began at Weltminfter the Wednesday after Ros Patling F.3. Bid Lent : the firft monday of the Parliament, the ninth part of their Gain, Mooll, and Lambe, tc. was granted to the Bing, on condition that the Bing would grant their petitions in a Schedule beginning. Thefe be the petitions which by the Commons and Lords leas drainne into a forme of a Statute, and valled both Poules, and the Royall allent thereunto. and the lame exemplified moer the Ozeat Seal. After this the Parliament continued, and divers Ans made, and petitions granted, and in the end that Partiament was disfolved.

In the Parliament holden Anno 3 R.2. it is declared by An of Parliament Ror. Pul. 3 R.2. that the killing of John Imperiall Amballadour of Jenoa, was High Treason, nu. 8.&c. gimen lala majeltacis, and pet the Bartiament continued long after, and divers Ads of Warliament afterwards made, and petitions granted : and in the end the

Barliament distolved.

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In the Parliament begum the first day of Barch, Anno 7 H.4. on Saturday Rot. Parl 7 14 4. the 8 day of May it was enacted by the King, the Lords Spirituall and Tempos nu. 29. &c. rall, and the Commons, that certain ftrangers by name, who feemed to be Offimes to the Queen, should by a day depart the Realm, and proclamation thereof in kinde made by Wirit, by authority of Parliament, which Parliament continue ed, and divers other Ads of Parliament made, and petitions answered : and on the 22 day of December 8 H. 4. dissolved.

The Parliament begin 7 Bobember, and on the first day of the Warliament it was refolved by all the Judges, that those that were attainted of freason, and returned unights, Citizens, or Burgelles of Parliament, that the attainders were to be reversed by authority of Parliament before they could lit in the Bouse of Commons: and that after the attainders reverled, both the Loads, and those of the House of Commons might take their places, for suchas were attainted could not be lawfull Judges, fo long as their attainders flood in force: and therewon the attainders were reverted by Act of Partiament, and then they took their places in Parliament, and the Parliament continued, and divers Ads made.

The Bill of Dineen Katherine Howards attainder palled both Boules about the beginning of the Parliament, whereunto the King fitting the Paliament by his Letters Patents gave his Royall affent, and pet the Parliament contimued untill the first day of Apaill, and divers Ads of Parliament passed after the faid Royall affent given. Divers more might be produced, but these thall luffice. So as albeit Bils palle both Boules, and the Royall affent given there-

unto, there is no Sellion untill a prorogation or a diffoliation.

The divertity between a procogation and an adjournment, or continuance of the Parliament, is, that by the proxogation in open Court there is a Section, and then fuch Bils as passed in either Bouse, or by both Bouses, and had no Ropallaffent to them, must at the next affembly begin again, ac. fo; every feverall Sefsion of Parliament is in law a severall Parliament: but if it be but adjourned of continued, then is there no Section: and confequently, all things continue bill in the same fate they were in before the adjournment or continuance.

And the title of divers Aas of Parliament be, At the Session holden by prorogation, or by adjournment and prorogation, but never by continuance of adjournment cantum. And the usuall form of pleading is ad Selfionem centam, &c.

per prorogationem.

I Marix Scil. 2. 28. Eliz, nu. 1. &c. And in every of them it is faid[and there continued untill fuch a day;] and yet in them divers adjournments were. See the Journall Book in the Lords House. Vitimo Innii 14 Ely. Custos Magni Siguli ex mandato Domine Regine adjournavit prasens Parliament' usq; in sestum omnium Sanstorum. And in the Parliament in Anno 39 Eliz. Cuftos magni Sigilli ex mandato Domine Regine (the Queen being abfent.)

far.prime.nu.7,

Rot. Parl. 1 H.7. 1 H.7.fo.4.b.

*Rot. Par. 33 H.8 begunthe 16 day of Janua y, and continued till the first of April following. On the 12 of February the Queen was beheaded in the Tower, fitting the Parlament. Prorogo, à porro & rogo, unde pro-100 ALIO. Adjourner, unde adjournarc, o adjournament E, cf al diem d'ecre, or diem dare. Rot. Parl. 23 H.8. 24 H.8.nu. 1. 25 H 8.nu.1. 26 H. 8.nu.1. 27 H.8.nu. 1 &c. 2 & 3 E.6.nu.1. 3 & 4 E.6.nu.1.

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The have been the longer and more curious for the clearing of this point for two reasons, 1. For that the adjournment or continuance (as before it appeareth) is much more beneficiall for the Common-wealth for expediting of causes, then a propagation. 2. In respect of a clause in the Act of Substitute in the Parliament holden in Anno 18 Jac. Regis, which is but declaratory of the somer law, as by that which bath been said appeareth.

of Parliament palled, or judgement given, it is no Sellion of Parliament, but

Rot. Parl. 18 R.2. In the 18 pe

In the 18 year of R. 2. at a Parliament holden before the Duke of Pork (the King being in his passage to Ireland) the Petitions of the Commons were an sweet and a Judgement given in the Kings Bench for the Prior of Pewport, pannell, against the Dean and Chapter of Lichfield was reversed, but no Adof Parliament passed, and therefore this Parliament is omitted in the print; but it is no question but it was a Session of Parliament, for otherwise the Judgement should not be of force: and many times Judgements given in Parliament have been executed, the Parliament continuing before any Bill passed.

The House of Commons is a distinct Court.

Nota, the House of Commons is to many purposes a distinct Court, and there fore is not progogued, or adjourned by the procogation or adjournment of the Lords House: but the Speaker upon signification of the Lings pleasure by the assent of the House of Commons, both say: This Tourt both procogue or adjourne it self; and then it is procogued or adjourned, and not before. But when it is dissolved, the House of Commons are sent for up to the higher House, and there the Lord Leeper by the Kings commandement dissolveth the Parliament; and then it is dissolved, and not before. And the Ling at the time of the dissolution ought to be there in person, or by representation: so as it cannot begin without the presence of the Ling either in person or by representation (as before it hath been said) so it cannot end or be dissolved without his presence either in person or by representation. Nihil enim cam conveniens est naturali equitation unumquody; dissolve or ligarum est.

It is declared by Act of Parliament, that the Kings Letters Patents under his Great Seale, and figned with his hand, and declared and notified in his ah fence to the Lords Spirituall and Temporall, and Commons assembled in the Higher House of Parliament, is, and ever was of as good strength and socce, as if the Kings person had been there personally present, and had assented openly

and publickly to the fame.

Of Subfidies and Aides granted by Parliament.

Sublidie is derived of the Terb Sublidiari, which signifieth to be ready to help at need, unde sublidium, which signifieth aide and help at need, so properly called, when Souldiers were ready to help the soreward of the battell: and aptly was the word so derived, as well because that which we call now sublidia, Subsidies, were anciently called auxilia, Aides, granted by As of Parliament upon need and necessity: as also, so, that originally and principally they were granted so, the defence of the Realm, and the safe keeping of the leas, tc. Communia pericula requirent communia auxilia.

This wood [Sublidie] is common, as well to the English, as to the French. Concerning Sublidies hear what a stranger truly writeth. Reges Angliz nihil tale, nisi convocatis primis ordinibus, & affentiente populo, suscipiunt. Que consuetudo valde mihi laudanda videtur; interveniente enim populi voluntate & assensia crescit robur, & potentia regum, & major est ipsorum authoritas, &

feliciores progressus.

Sublidies taken in their generall sense for Parliamentary Aides are divided into perpetuall and temporary: perpetuall into three parts, viz. into Customa antiqua

Bracton.

33 H.8.cap.21.
Royall affent by
Leiters Patents.
Dier. I Mar.93.
Commission au 4
S igniors, &c.
a doner royall of
fent, & indorcement fait. Soit
fait come est destreet.

Ph. Cominzus, Lib.5.fo.233. for

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ntique, five magna, cultuma nova five parva, and into cuttome of Bload oth. Temporary, whereof there are three kindes, viz. 1. of Tonnage and Poundage of ancient time granted for a year or years incertainly , and of latter times for life. 2. A Sublidie after the rate of 4 s. in the pound for lands, and 15, 8 d, fo; goods. And 3 fo; an Aide called a fifteenth, And of thefe in o;der.

Custuma antiqua five magna.

Custuma antiqua five magna was by Act of Parliament granted to Ming E.I. his heirs and fuccestors for transportation of three things, viz. Wools, Moolfels, and Leather, viz. for every fack of wool containing thirty fir ftone, and every frome fourteen pound, half a mark; and for three hundred woolfels halfa mark, and for a latt of Leather thirteen thillings four pence, to be paid as well by Strangers as by Englift. Pralati, magnates, & tota communitas concesserunt quandam novam consuetudinem nobis de lanis, pellibus & coriis dimid' marc', de 300. pellibus dimid' marc', & de lasta coriorum unam marcam, In the Catute called confirmationes cartarum Anno 25 E.I. there is a faving in thele woods, Save a nous, & nous heires la custome des leynes, pealx & quires grant' per le Comminalty du realm. See allo the like in the Deamble : * Salva tamen nobis & haredibus nostris custuma lanarum, pellium & coriorum per Communitatem dicti regni nobis prim' concess.

Apote it is faid in Divers Records, cer Communicatem Angliz nobis concest, because all grants of Sublidies o. Aids by Parliament doe begin in the Bouse of Commons, and first granted by them: also because in effect the whole profit which the King reapeth both come from the Commons.

See hereafter, c.11. Verb. de nous Customes, &c. Rot. finium An. 3 5.1.Rot.Pa . 3 E.1.m.1. dat. 10 Novem's which was in the end of the year, for he began his reign 17 Nov. Confirmat, Cartarum Vet.Mag. Cart. 2.parte fo. 36.0. " Int.brevia de Term Mich. 26 E.r. In offiremem, regis. a 12 H.4.nu-45. 6 H.6.nu.11. 12 B.4.ca 3.

7 E.4. nu. 30. 1 E.6. ca.13. 1 Mar.cap.18. 1 Eliz. ca.19. & 3 Jac. Regis accord.

Cultuma parva & nova.

In the 31 year of E.1. the Derchant Grangers in confideration of certain liberties and priviledges granted to them, and a release to them of all priles and takings, gave to the king and his heirs , three thillings four pence , ultra antiquam custumam ut prius concess. So as where the Subject paid a Roble, the Stranger paid ten thillings, tc. Dee the ftatutes of 1 H.7.ca,2. 11 H.7.cap.14. Rot. Cart.31 E.1. 22 H,8,cap,8.

Custuma is derived of the Frech word confirmai. tributum feu ve-Aigal. nu.44 called Carta mercatoria;

This was queffioned Rot. ordinat. Anno 5 E.E.2. but allowed of in Parliament, Anno 1 E.3. 9 E.3. ca.1. 27 E.3. Stat. Stapl.ca. 26. F.N.B. 227.d. 259.2,

Custome of what things, exantiquo.

And it is to be observed, that of ancient time no Custome was by English oz 1 El. Dier 165. Stranger, but fo; Wools, Woolfels, and Leather. Hereby it appeareth how necessary the knowledge of ancient Records, and of the true original of every

In the reign of E.3. a great part of the Wools for the which fuch Custome Of Wooledrawas granted, and paid, as is afozefaid, was draped into broad Cloth: wheremon ped into Cloth question grew, whether upon the transportation of the Cloth, into which the no Custome was Wool was draped, Custome should be proportionably paid, having regard to the quantity of the Wool so converted into Cloth: and it was resolved that no Cufrome Mould in that case be paid, because the Wool by the labour and industry of man was changed into another kind of merchandise: where with the king beld himself satisfied, and so it appeareth in the kings own Writs and Records enrolled in the Erchequer.

The first Act of Parliament that gave any Sublidy of Cloth, was in Anno 21 E.3. (not painted) viz, fourteen pence of Lieges, and one and twenty pence

b

Int.Orig. de Scaccario, 24 E.3. Rot 13. 1b.27 E.3. Rot 4. See the Second part of the Inftitutes, Mag. Carr. cap.30.pa.60. By 27 E.3. ftat.1. & ca.4. Cuftome of Cloth. Viz the Sublidies granted in Anno 21 E.3. The Ainagers fee of the Subject granted by Par-liament. Mag. Cart.ca.30. Consuerudines. Stat.de Scaccario. gt H.3. Custum des Leynes. 11 H.4.ca 7.

of Strangers, for every Cloth of Alife, and two fillings four pence of Lieges, and three Willings fir pence of Strangers for every Cloth of Scarlet, tc. Vide inter Original' de Scaccario, 24 E.3. Rot. 13. And the reason of granting the fail Sublidies of broad Cloth was, Quia jam magna pars lanæ regni nostri in codem regno pannificitur, de qua Custuma aliqua non est foluta, per quod proficuum quod de Custumis & Subsidiis lanarum, si extra dictum regnum ducerentur, percipere debemus, in multo diminuuntur, &c. And pet if in any case the king might by his Deerogative have let any imposition, he might have set one in that case, so that, as it appeareth by that Record, by making of Cloth the king lost his Customes of Wool: and therefore for further latisfaction of the King for the Cu Stome of Wool; at the Parliament holden in Anno 27 E.3. a Sublidy was gran. ted to the King his heirs and fuccestors, (* over the Customes thereof due)viz, of every whole Cloth of Affice not ingrained, four pence, and for the half of fuch a Cloth, two pence, and of every Cloth ingrained five pence, and of the halfe two pence half penny, and of every Cloth of Scarlet fix pence, and of the half three pence; and the Alnegers fee is granted to him by Ac of Parliament, viz. for the measuring of every Cloth of Asise of the Seller a halfpenny, and of half a cloth a farthing for his office, and no more, nor thall they take any thing for a cloth that is leffe; and that he take nothing of the Alnage of any cloth but only of such cloth as is to be fold. And both in this Act, and in some Acts in the reign of H.z. confactudines & cultume, which are englished, Cuffomes, are taken for the Sublidies that were granted by Parliament, for verily those were ancient and right - Customes of Subsidies. And in the statute of 11 H. 4. Tufomes and Sublidies are used as Synonymaes.

Butlerage.

Butlerage is a Custome due to the King of two Chillings of every Tun of Witne brought into this Realm by Strangers: but Englishmen payeth it not.

In libro Rubeo in Scaccario in custodia Rememoratoris Regis, fol. 265. the grant of Bing John to the Derchants of Aquitain trading for wines theme into England of divers libertics, viz. De libertatibus concessis mercatoribus vinetariis de Ducatu Aquitania, reddendo regi & haredibus suis 2.5, de quolibet dolio vini ducti per cosdem infra regnum Anglia vel potestate regis.

All sperchant Strangers in consideration of the grant to them by the hing of bivers liberties and freedoms, concesserum quod de quoliber dolio vini quod adducent vel adduci facerent infra regnum, &c. solvent nobis & haredibus noftris nomine Custuma duos solidos, &c.

Prisage.

Prilage is a Custome due to the King of the wines brought in by the Perchants of England of every Ship having twenty Tuns or more, two Tuns, viz. one before the Past, and the other behind, paying twenty thillings for each Tun; and this is called certa prila, and recta prila, and regia prila, as in the Record ensuing appeareth, and hercof Perchant Strangers are discharged, per cartam mercatoriam, 31 E.1. Ubi supra.

Memorandum quòd rex habet ex antiqua consuetudine de qualibet nave mercatoris vini 6, carcat' applican' infra aliquem portum Angliæ de viginti doliis duo dolia, & de decem doliis unum de prisa regia pro quodam certo ab antiquo constitut' solvend'.

Hereby it appeareth that Poilage is due by prescription, and that it was a

certainty of ancient time ordained to be paid. It is called Butlerage because the Kings chief Butler doth receive it, and Prisage, because it is a certain taking or purveyance sor wine to the Kings use.

In Hilary Tearm, Anno 2 Jac. Regis, upon a futt made to the King by the Duke of Lenor, question was moved concerning new Dapperies, as Frisables

Lib.rubeus in Scacc.fo.265. Vid.6 E.3.fo.5 & 6.the Archb.of Yorks cafe.

Rot. Cartarum Anno 31 E. I. nu. 44-called Carta mercatoria.

Fleta li. 2.c3.21. Rot.Pat.40 H.3. Rot.Pat.28 E.1. pro Math.de Corambar'.

P.Rec. 20 R.z. Vid.Tr.33 E.I. Ror.124.Prifæ Vinorum in Hibernia.

43 E.3.ca.3. & 1 H.8.ca.5.

Concerning the Alnoging of new Draperies. 1.0

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Cap.i.

Does, Bayes, Porthern Cottons , Porthern Dozens, Clothrath, Durances. Berpetuanoes, Auftians, Canvas, Sackcloth, Worfteads, and Stuffs made of Mortead parn, whether the king might grant the Alnaging of them with a reasonable fee, or whether they were within the said statute of 27 E.3. And these questions were by the Bings commandment in this Hilary Term referred to all the Judges of England to certifie their opinions concerning the fuit to the Lords of his Privy Councell; who upon often hearing of the cause, and mature peliberation, and conference among & themselves, in the end in Trivity Term following with one unanimous confent, certified in waiting in thefe woods following, viz. To the Loads and others of his Pajefties moft Honourable Drive Countell. Our duties to your Lordships remembred. May it please the same to be advertised, that according to your Letters in that behalf, we have heard the matter touching the fearm of the Alnage, and measurage, that is fought to be granted by his Majesty of sundry kindes, as well of new made Drapery, as of other Stuffsmade within this Realm. And upon hearing as well of some of the part of the Master of Orkney, as of others, both of the behalf of the Duke of Lenox and Master Shaw, have informed our selves touching the same. And for our opinions we are resolved, that all new made Drapery made wholly of wool, as Frizadoes, Bayes, Northern Dozens, Northern Cottons, Cloth rath, and othet like Drapery, of what new name soever, for the use of mans body, are to yeeld Subfidy and Alnage according to the statute of 27 E 3, and within the office of the ancient Alnage, as may appear by feverall decrees in that behalf made in the Exchequer in the time of the late Queen. But as touching Fustians, Canvas, Sackcloth and fuch like made meerly of other stuff then wool, or being but mixed with wool, we are of opinion, that no charge can be imposed for the fearch or measurage thereof, but that all such Patents so made are void, as may appear by a Record of the 11. year of H.4. wherein the reason of the judgment is particularly mentioned, which we held not amiffe to fet down to your Lordships, which is thus, The same King H.4. granted the measurage of all woollen Cloth and Canvas that should be brought to London to be fold by any stranger or denizen (except he were free of London) taking one half penny for every piece of Cloth so measured of the seller, and one other half penny of the buyer, and so after the rate for a greater or lesser quantity, and one penny for the measuring of 100. els of Canvas of the seller, and so much more of the buyer. And although it were averred that two other had enjoyed the same office before with the like fees, viz, one Shering by the same Kings grant, and one Clytheroe before by the grant of King R.2. yet, amongst other reasons of the Judgment, it was fet down and adjudged, that the former possession was by extortion, and coertion, & without right, and that those Patents were in onerationem, oppressionem & depauperationem populi domini regis, & non in emendatione ejudem populi, &c. and no benefit to the King, and therefore the Patents void. And as touching the narrow new stuffe made in Norwich and other places with Worstead yarn, we are of opinion that it is not grantable, nor fit to be granted, for we cannot find, that there Wasever any Alnage upon Norwich Worsteads. And for these stuffs, if after they bemade and tacked up for fale by the makers thereof, they should be again opened to be viewed and measured, they will not well fall into their old plaits to be tacked up as before, which will be (as is affirmed) a great hinderance to the fales thereof in groffe, for that they will not then appear to be so merchandizable, as they were upon the first making of them up: And even so we humbly take our leaves. Serjeants Inn, the 24. of June. 1605. Which Certificate being read by the Lords of the Privy Councell (I being then Atturny generall and prefent) was well approved by them all, and commandment given, that it should be kept in the Councell Cheft to be a direction for them to give answer to all luits of that kind.

And it is to be observed, * that Ads of Parliament that are made against the freedome of trade, merchandizing, handycrafts, and mysteries, never live long.

See Rot. Parl.
50 E 3. nu. 142.
Cogware Kerfeys.
See hereafter,
cap.67.
See Rot. Parl.
9 H.4. nu. 34.
Kendall Clothes,
&c. 11 H.4. c. 2.
cnact. 11 H.4.
nu. 26. for remnants of Cloth,
&c. 11 H.4. c. 7.
Stat. 2.

37 E.3.ca.5,6. 38 E.3.ca.a. Lib.11.fo.54. de Taylers de lpfwich. Bils, motions.

Good Bils or motions in Parliament seldome die.

It is an observation probed by a great number of presidents , that never am 8 Ez.nu. 17 E.3. good bill was preferred, or good motion made in Parliament, whereof any me. nu.49 1 K.2. nu.82. 4 R.2. mortall was made in the Journall book, or otherwife, though sometime it line ceeded not at the first, pet bath it never died, but at one time of other bath taken nu.36. 9 R 2. nu-44. 1 H.4. effect; which may be a great encouragement to worthy and induffrious attempts, nu.121. 2 H.4. as taking fome few examples for many, which I have quoted in the margent. nu.83. 2 H.4. nu.70. 11 H.4.

nu. 47. 1 H. 5.nu. 23. 7 H. 5. nu. 18. 1 H. 6. nu. 41. 7 E. 4. nu. 20. Adis of Parliament. 2 E. 3. cap. 2. 25 E. 3. cas. 4 H.4. ca. 22. 1 H.5. cap. 1. 15 H.6. ca. 14. 1 R.3. ca. 3. 21 H.8. cap. 5. 23 H.8. cap. 4. 26 H.8. cap. 3. 31 H.8. cap. 32. H.8. cap. 32. 2 E.6. cap. 8. & 13. 1 & 2 Ph. & Mar. cap. 13. Vide Infrascap. 8. pa.

The Subfidy of Tunnage and Poundage.

By the subsequent Records you thall observe 13. things. 1. The grant of Poundage only. 2. Of Tunnage and Poundage. 3. Severall rates, some times 6. D. 8. D. 12. d. for Poundage. 4. Sometimes 2. S. 18. d. 3. S. 5. Har vice, 1,2,3,4. years, for life. 6. To Perchants sc. 7. To have intermission and to vary left the king thould claim it as a duty. 8. Expelled upon fre gift. 9. Upon condition to keep the Seas, and for commerce. 10. That is ever the confideration and cause of the grant. 11. Branted without retrospec 12. Sometimes double of Strangers. 13. Cloth ercepted, that it be not find jed to Tunnage and Poundage. 31 H.6.

2 De Poundage only, and 6. d. in the pound, for two years upon condition, k.

b 6. d. for Poundage, and 2. s. for Tunnage of wine, hac vier.

6.d. of every pound of merchandize, and 2.s. of every tun of wine upon condition, tc. hac vice.

d Sometime to have intermission, and to vary, lest the king should claim a duties.

For Tunnage of wine 3.5. and 6.d. for Poundage for one year,

3. s. for Tunnage of wine, 12.8.for Poundage, hac vice.

5 6. d. for Poundage, and 1 8.d. for Aunnage of wine for three years.

h 8.d. for Poundage and 2.s. for Tunnage of wine.

1 12. d. for Poundage, and 3.5. for Tunnage of wine for three years.

k 12. d. for Poundage, and 3.5. for Tunnage of wine for feverall times upon condition, sometime so; one pear. In these and most of the former granted upon condition for due employment ! of their own good will, and fo entred, and the hing to have a certain fum more erprefly.

1 12.0. for Poundage, and 3. s. for Tunnage of wine for four years.

. The like Sublidy is granted to the King for his life upon conditions, to which was the first grant of Tunnage and Poundage for life, which was a leading grant, as hereafter appeareth.

P The Sublidy of Boundage only for two years.

g Tunnage of wine and Doundage granted for severall years.

Tunnage and Poundage, ut prius of Dentzens, double of Strangers.

Tunnage of wine and Poundage granted to H.6, for life with an erception of all woollen' Cloth: and here Cloth was first ercepted, and was a leading erception in all subsequent ace.

umage of wine and Poundage granted to E.4. for life with no retrofped,

but for the time to come.

" At the Parliament holden Anno 1 H. 7. a like Act was made for the grant of the Sublidies of Tunnage and Poundage to him for his life.

* And the like Sublidy was granted to King H.S. at the Parliament holden Anno 1, of his reign for his life.

& Rot. Parl, 1 H.S. not printed. Vid. 6 H. 8.ca. 14.in print.

The Records.

a 47 E.3.nu.12. 6 6 R.z.nu.13. c 7 R.z.flat.r.

d 5 R.2.nu.49. 9 R.z.nu.11. 10 R. 2.nu, 18. 11 R. z.nu.12. e 13 R. 2.nu. 20.

f 14 R.2.nu. 12. g 17 R.2.nu. 12. h 2 H.4.nu.9. i 4 H.4.nu. 23. 46 H. 4.nu.g. 8 H.4 nu.9. 9 H.4.nu.27.

1 11 H.4.nu. 45. m 13 H.4.nu.10. # 1 H.s.nu .17. 0 3 H.s.nu.50.

p 2 H.6.nu.14. 9 3 H.6.nu.17. 9 H.6 nu.14.

r 33 H.6.nu.16. f31 H.6.nu.8. & cap.8. * Nota.

t 4 E.4.& 12 E.4. ca.3. in print. # Rot.Par. I H.7.

not printed for he had many fubfidies, but printed none.

The

The like grant was made to E.6. Ducen Mary, Ducen Eliz. and hing James 1 E.6.ca.13. for their feverall lives, and in all thefe it is affirmed, that the like grants were

made by Act of Parliament to Bing H.7. and Bing H.8.

The confideration of the grant of thefe Subilibles of Tumage and Poun. have is ever, as is aforefato, expressed in the grant, tor the keeping and lateguard of the Seas, and for intercourle of merchandige fafely to come into this Realm, and fafely to palle out of the fame. And this pertaineth properly to the office of the Lord Admirall to fee the confideration of the At to be performed. * They are granted of the free good will of the fubjeds, and fo erprelly fet down in the

Parliament Roll.

luc

In Ling James his reign, when I was a Commillioner of the Areafurp, thele bublidies granted for life amounted to Dne hundled and threefcore thoufand pounds per annum, and fo letten to farm. The values of the merchandise for the which the Sublidy of Poundage is paid, do appear in a book of rates in print, inhereby the Herchant knows what he is to pay. The Sublidy of Tunnage of wine is certain in thefe Ads by the contents of the Mellels : and none of thefe Ads docertend to any other liquid merchandize imported or exported, but unto inines only : and feeing nothing is more incertain then the continuance of the values of merchandizes wherefore the Sublidy of Poundage is paid, it were good at every grant of them to fet down the rates in a schedule annered to the bill.

Subsidies temporary and usuall at his day.

Subfidies tempozary and usuall at this day. And this is when the Commons in Parliament freely grant to the Liting an aid to be levied of every Subject of his lands or goods after the rate of 4 s. in the pound for lands, and 2 s. 8 D. for goods, and for Aliens for goods boutle, to fuch ends and for fuch confiderations, and to be paid at fuch times, as by the Ads thereof (which are usuall and frequent) doe appear. And in former times in this kind of Sublidy, this order mas observed, that over and above the bublidy of Tunnage and Boundage, the Commons never gave above one Sublidy of this kind, and two fifteens, (and fometime lefte) one Sublidy amounting to Seventy thouland pounds, and each Fifteen at Twenty nine thousand pounds, og near thereabouts ; nog above one Sublidy, which did rife to Twenty thousand pounds, the Clergy gabe not.

At the Parliament holden in 31 Eliz, the Commons gave two Subfidles, and

four Fifteens. which first brake the circle.

In 35 Eliz. three Sublidies and fir Fifteens. In 39 Eliz. three Sublidies and fir Fifteens. In 43 Eliz. four Sublidles and eight Fifteens, tc.

In at Jac, Regis, three Subudies and fire Fifteens in Chorter times then had been before.

In 3 Car. Regis, five Sublidies in Mortelt time of all.

And it is worthy of observation how quietly Subsidies granted in forms usuall and accustomable (though heavy) are borne; such a power hath use and cuflome: On the other fide, what discontments and disturbances Sublidies framed in new molds doe raise. (such an inbaed hatred novelty doth hatch) is ebident by eramples of former times:

As that of 4 R.2. a new invention of Sublidies of the Bings Subjects of et. Rot. Par. 4 R.2. ther fer by the poll, tc. for the furnithing of the Carl of Buckingham for his going into France, whereupon a ffrong and a frange Retellion enfued, wherein three great and worthy Officers were by the rascall Rebels barbarously and wickedly murdged, viz, Simon Sudbury Archbithop of Canterbury, Chancelour of England, the Photos of S. Johns of Berufatem, Ercafurer of England, and Sir John Cavendish Chief Juftice of England.

In 4 H.7. another like new found Sublidy was granted, which raised are. Hollens. Chron. bellion in the Roath, in which the noble Carl of Posthumberland a Commillio: 769.

ner in that Sublidy, was by the Rebels cruelly and causelesty flain.

1 Mar.cap.18. 1 Eliz.cap.19.

1 Jac.ca.33.

* Rot. Par. 11 H. 4. nu 45. 13 H.4.

A book of rates

DU.I C. 5 R. 2.nu.32.

34

The High Court of Parliament. Cap.i.

Hollenth. Chron.

In Anno 16 H.8. to furnish the King for his going in his royall perfor into France, a new device for getting of mony was let on foot, which made the head-lette and heedlets multitude to rife in rebellion, until Charles Brandon the noble Duke of Suff quieted, and dispersed them.

Rot. Par.9 E.3. nu. 5. At the Parliament holden in 9 E.3. when a motion was made for a Sublidge to be granted of a new kind, the Commons answered, that they would have conference with those of their severall Countries and places, who had put them in trust, before they treated of any such matter.

9 H.6.mu.15. 10 H.6.mu.50. Vide 9 H.6.nu. 15. Every knights fee to pay 20 s. and so according to the value under 02 over, and so of the Clergy so, lands purchased since 20 E. 1. And all other having 20 l. lands not holden as is asozesaid, 20 s. 4c. This whole Substidy so, certain doubts the king utterly released, so as there is no mention made of the same: But hereof thus much thall suffice.

Sæpe viatorem novamon vetus orbita fallit.

Of Fifteens, Quinzims, &c.

Fifteens, Quinzim or Task, or Quinta decima.

A Fifteen is a tempozary Aid granted to the King by Parliament, which without further inquiry is certain, and therein differeth from the Sublidy, which is ever uncertain, untill it be allelled.

The Afteen of ancient time was the fifteenth part of goods moveable, but in 8 E.3. all the Cities, Bosoughs, and towns in England were rated certainly at the fifteenth part of the value at that time generally upon the whole town, where of you thall read more at large in the Second part of the Institutes, in the last Chapter of Magna Carta, Verb, Quintam decimam partern bonorum mobilium.

Second part Inft. Mag. Carta cap. ultimo.

* Doomfday.

Norff. in Wane-

lunt, i. Wayland,

& ibid.in Fre-

bringe in Maf-

Of Tenths.

There is decima pars of the Laity, and for the most part of Cities and Be roughs by their goods (Vid. 1 R.2. nu. 26.) which proportionably is, secundam decimam quintam partern. That which we call Tar, Tallage, Tenth, and Fifteen, the Sarons called Geldinn, * we use the word changing g to y. sor gelding, yedding, etc.

No * Sublidy before the end of the Parliament, because it is to accompany the pardon.

parvon

fingham.&c.

* Rot. Bar. 11 R. 2. nu. 11. This is contained in the A& of Subfidy, and fo an A& of Pailiament 2 and accordingly Subfidies, &c. have been granted, as in the book of statutes appeareth.

Of AEts of Parliament of confirmation of Letters Patents.

Rot.Par.2 H.5. nu.20. 1 H.6. nu.46 3 H.7.to the Queen 6 H.8. to the Duke of suff.

The have read of particular Ads of confirmation of Letters Patents; but the first of lands, ic. that was the more generall, was the statute of 31 H.8.ca.13. of Monasteries (to make those lands the more passable) but after that, generall Ads of confirmation of Letters Patents have been very frequent.

How the Lords give their voices.

In the Lords House, the Lords give their voices from the puisse Lord seriarim by the word of content, or not content.

Rot.Par. 6 H.6.

A bill was preferred at the Parliament holden in Anno 6 H. 6, that no man should contract or marry himself to any Dueen Dowager of England without special licence and assent of the King, on pain to lose all his goods and lands. The Bishops and Clergy assented to this bill, by the word of content, as far forth as the same swarved not from the law of God and of the Church, and so as the same imported no deadly sin. At this time there were besides the Archbishops

Cap.1. The High Court of Parliament.

Bishops and Bishops, 27 Abbots and 2 Priors, (albeit in troth the number was many times uncertain, as in the close Roll it appeareth) which severally beld per Baroniam, and were Lords of Parliament, and so continued untill they were disolved in the reign of H.8. The entry of the said Act of 6 H.6, in the Roll is: It is enacted by the King, Lords Temporall, and Commons, that no man should contract or marry himself to any Queen of England, without the special license and assent of the King, on pain to lose all his goods and lands. The Bissops and Tlergy assented to this Bill, as far forth as the same swerved not from the law of God, and of the Church, and so as the same imported no deadly sinne. This is holden to be an Act of Parliament: First, so, that the assent of the

This is holden to be an Act of Parliament: First, to: that the assent of the Clergie could not be conditionall. Secondly, it was not against the law of God not of the Church, not imported any deadly sinne to make this law by authority of Parliament, as it appearesh by Magna Carra, cap. 7. which had by 32 Acts of

Parliament been confirmed, and many others.

DP

This Law was made after the mariage of Aueen Katherine Downger of H. 5. with Owen ap Meredith ap Grono (descended of the Princes of Wales) by whom the had issue Edmond of Hadham asoresaid. Carle of Richmond, and Japer of Hacfeild, after Carle of Pembroke, and Duke of Bedford.

How the Commons give their voices.

The Commons give their voices upon the question, by Pea or No, and if it be doubtfull, and neither party yeild, two are appointed to number them; one for the Pea, another for the No: the Pea going out, and the Rositting: and thereof report is made to the House. At a Committee, though it be of the whole House, the Peas go of one side of the House, and the Noes on the other, whereby it will easily appear which is the greatest number.

How Parliaments succeed not well in five Cases.

It is observed by ancient Parliament men out of Record, that Parliaments bave not succeeded well in five Tales. First, when the Ling bath been in displeasure with his Lords, or with his Tommons. 2. When any of the Great Lords were at variance between themselves. 3. When there was no good correspondence between the Lords and the Tommons. 4. When there was no unity between the Tommons themselves. 5. When there was no preparation

for the Parliament before it began.

a for the 1: So esentiall is the Kings good will towards his Commons, that it was one of the petitions of the Commons to the King, that he would require the Archbift. Fall others of the Clergy to pay for his estate, for the peace f good government of the land, for the continuance of the kings good will towards his Commons: whereunto the thrice noble king assented with these effectuall words, The same prayeth the King: many times the like petitions for the Lords. How the king in all his weighty affairs had used the advice of his Lords & Commons, (so great a trust & confidence he had in them.) Alwaies provided, that both Lords & Commons keep them within the circle of the Law & customeof the Parliament.

c for the second: at the Parliament holden in 4 H. 6. what variance was there between the Duke of Gloc. and the B. of Winchester, and their friends on either side: the successe was, that little was done in any Parliamentary

course at that Parliament, and that little was of no moment.

d At the Parliament holden in the third year of H.6.the great controvertie was between John Carl Parthall, and Richard Carl of Warwick with like successe.

The like controversic between William Carle of Arundell and Thomas Carl of Devon, for superiority of place, with like event. And many more might be cited. And alwayes in the beginning amity was made between the Grandees of the Realm by thaking of hands and kissing, and sometime by submission.

For the third, when it was demanded by the Lords and Tommons what might be a principall motive for them to have good successe in Parliament, it was answered, Eritis insuperabiles, si sucritis inseparabiles. Explosum est illud diverbium; Divide, & impera cum radix & vertex imperii in obedientium confensurata sunt.

How many Lords Spirituall in former times.

Pl.com.126.miftakethit, and that the Clerk number them.

a Ror. Parl 37 E.3. nu.a. and the Writ to the Clergie, De orando pro rege & remo, which was usuall in those dayes. & Rot. Parl. 43 E.3.nu.1. 25 E.3. nu.15. 50 E.3.nu. 1. c Rot. Par. 4 H.6. nu.12. Sce the Acts of that Parliament. d Rot. Par. 3 H.6. nu.1.& 10. e Rot. Parl. 27 H.6. nu.18. f Rot.Par a H.4. nu.14. 5 H.4. nu. 18,20. Rot. Parl. 21 R.s. by the dell to the D. of

1 Chron cap. 28.

20 Judicum.

For the fourth, unity between the Commons themselbes. It is most necessary in both thefe, and agreeable to the Parliament in the Book of Budges. Quali homo unus, eadem mente, uno confilio.

For the fifth, the Summons of Parliament is by forty dayes or above before the fitting, to the end that preparations might be had for the arduous and urgent affaires of the realme: and that both the King, according to the example of Ling David, and likewife the Pobles and Commons thould prepare; for praparata meditationes funt semper saniores & meliores quam properata, whetein both Boules may greatly expedite the bulinelle of the Common wealth in Bar. liament, if they will purfue the ancient cuttome of parliament, viz. in the le ginning thereof to appoint a felect Tommittee to confider of the Bils in the time laft Parliaments that palled both Houles, og either of them, and fuch as ben been preferred, read, or committed, and to take out of them fuch as be most prof. table for the Common-wealth.

The honour and antiquity of the Parliament.

7 H.6.28. lib. 11. fo.14. Inter leges Edwardi regis.ca.8.

a See 13 Eliz.

ide infra-ca.79.

b Fortefc.ca.18.

d Rot. Par 12 E 4

nu.20,21.22. the

case of the wives of the Duke of

Clarence and

c 12 E.4.nu.34.

Duke of Buckingham.

f 21 K. 2.nu.27.

Sir Ro. Plefing-

g This is ufuall

in many Parlia-

5 Rot. Par. 5 & 6

E.6. the Lo. Marquiffe of Winche-

i Rot.Pat. Anno

ton. 31 H.6. cap.1.

ments.

fters cafe.

20 3.2.m.6.

to the Houscof

Lanc, by mariage

Glecefter.

Virgil.

cap. I. 39 H. 6.15.

For the honour and antiquity of the Parliament, fee the first part of the Infitures, Sect. 164. Verb. Veigne les Burgesses, and in the Preface to the nimb Book of my Reports, fo. 1,2,3,4, &c. Whereunto you may adde, Int' leges Edwardi regis, cap. 8, De decimis Ecclesiæ reddendis, Sect. De apibus vero, &c. Hac enim pradicavit beatus Augustinus, & concessa sunt à rege Baronibus populo. A grant by erprette Act of Parliament. Vide infra, cap. 79. pag.

The power and jurisdiction of the Parliament.

a Df the power and jurisdiction of the Parliament. for making of laws in ma ceeding by Bill, it is fo transcendent and absolute, as it cannot be confined either for causes or persons within any bounds. Of this Court it is truly faid: b Siaptiquitatem spectes,est verultissima, si dignitatem, est honoratissima, si jurisdictionem, est capacissima.

Huic ego nec metas rerum, nec tempora pono.

Det some eramples are desired. d Daughters and Beirs apparant of a min or woman, may by Act of Parliament inherit during the life of the Ancesto;

e It may adjudge an Infant, or Dinor of full age. f To attaint a man of treason after his death.

g To naturalize a meere Alten, and make him a Subject borne. h It may baftard a childe that by law is legitimate, viz. begotten by an Adulterer, the husband being within the foure Seas.

To legitimate one that is illegitimate, and boan before marriage absolutely. And to legitimate secundum quid, but not simpliciter. As to take one erample

for many.

I John of Gaunt Duke of Lancatter had by Katherine Swinford before marris age four illegitimate children, viz. Henry, John, Thomas, and Joane. And be cause they were borne at k Beaufort in France, they were bulgarly called Henry De Beaufort, &c. John before the 20 year of R. 2. was Enighted, and Henry be came Prieft. 1 At the Parliament holden 20 R. 2. the King by Act of Parlis ment in forme of a Charter both legitimate thefe three fonnes, and Joane the daughter : and the Charter beginneth thus. Rex, &c. Chariffimis confanguineis nostris nobilibus viris m Johanni Militi: " Henrico Clerico: o Thomz Beaufort came p domicello, ac diletta nobis nobili mulieri 4 Johanna Beaufort domicella Germanis præcharissimi avunculi nostri, Johannis Ducis Lancastriæ pacis ligeis

between Blanch of Arcois, and Edmond first Earle of Lancast. 1 Rot. Pat. 20 R. 2. membr. 7. m This Iohn in Anno 21 R. 2 who created Earle of Somerset, and Marquisse Dorset. But in 1 H. 4. the Marquissip was taken away by Parliament.

This Henry was after Bishop of Winchester, Cardinall of S. Ewseby, and Chancellor of England. This Thomas was in 21 R. 2. created Earle of Dorset. p For Domicellus, &c. See Lamb, inter leges Edw. fo. 139. b. Nos indiscrete domicellos de plusibus dicimus, quia Baronum filios vocamus domicellos, Angli vero nullos, niss natos regum. q Ioane was fi. ft married to Ralph the first Earle of Westmerland, and afterto Robert Ferrers Lo. of Owseley.

nostris

The High Court of Parliament.

Qali

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of

paein nostris Salute, &c. Nos dicti avunculi nostri genitoris vestri precibus inclinati, vobicu qui (ut afferitur) defectu nataliu patimini, ut hujulmodi defectu (que ejulq; qualitatis qua cunq:prælentibns habere volumus pro sufficienter expressis)non obstante ad quarcunque honoris dignitates, (* excepta dignitate regali) prahemipencias, status, gradus, & officia publica & privata tam perpetua quam temporalia, atq; feudal' ac nobil' quibuscunque nominibus nuncupantur, etiamsi ducatus, principat', comitat', Baronia, vel alia feuda fuerint, etiamfi mediate, vel immediate vel à nobis dependeant seu teneantur, prafici, promoveri, eligi, assumi & admitti, illaq; recipere, retinere, perinde libere & licite valeatis, ac fi de legitimo thoro nati existeretis, quibuscunq; statucis seu consuetudinibus regni nostri Anglia in contrarium editis seu observatis (quæ hic habemus pro totaliter expressis) nequaquam obstantibus; de plenitudine nostræ regalis potestatis, ac de assenso Parliamenti nostri tenore præsentium dispensamus, vosque & vestrum quemlibet Natalibus restituimus, & legitimamus. In cujus rei testimonium. Teste Regeapud Westm. 9 die Febr. Per ipsum regem in Parliamento.

In this Ad are divers things worthy of observation. 1. The names whereby they were legitimated, 2. That this legitimation was not simpliciter, but fecundum quid : for they were legitimated and made capable of all dignities ercept the Royall Dignity: fo as this legitimation extended not to make them 02 their posterities inheritable to the Crowne, but to all other dignities, 3. That before their legitimation, they were not created to any of their dignities. 4. The bice and artificiall penning of this ligitimation, with generall woods, as if the particularity were expressed, and with a brief non obstance, and with as little blemith as may be. 5. And hereby it appeareth, that a H.7. being fon of Edmond of Hadham C. of Richmond, Margaret his wife, Daughter & heir of John de Beau. fort D. of Somerfet: which Margaret lineally descended from the faid John de Beaufort legitimated & made capable of all Dignities, as is aforefaid, excepta regali dignitate, that the best title of H.7. to the Crown, was by Elizabeth his wife, eldeft daughter of E. 4. Det before this mariage the Crown was by Ad of War: liament intapled to H. 7. and to the heirs of his lody, the right of the Crowne then being in the faid Elizabeth, eldeft daughter of E. 4. 6. In this Ad, the faid Thomas before his legitimation could not be called Cfquire, and therefore he hath this addition of " Domicello, either derived of the French word Domoicell, which fignifieth a young fouldier not pet Enighted, or fignifieth nolly boine. And note, Iohan, the daughter, had the addition of De Beaufort and Domicella in that fenfe alfo.

b And albeit I finde an attainder by Parliament of a subject of High Treason being committed to the Tower, and forth-comming to be heard, and pet never called to answer in any of the Poules of Parliament, although I question not the power of the Warlianient, for without question the attainder standeth of force in law: pet this I fap of the manner of the proceeding, Auferat oblivio, fi poteff; fi nor, ucunque filentium tegat : for the more high and absolute the jurisdiction of the Court is, the more just and honourable it ought to be in the proceeding, and to give example of justice to inferiour Courts. But it is demanded, fince he was attainted by Parliament, what thould be the reason that our Distozians do all agree in this, that he suffered death by a law which he himselfe had made. For answer hereof, I had it of Sir Thomas Gawdye Anight, a grave and reverend Judge of the Kings Bench, who lived at that time, that King H. 8. commanded him to attend the chiefe Justices, and to know whether a man that was forthcomming might be attainted of High Treason by Parliament, and never called to his answer. The Judges answered, that it was a dangerous question, and that the High Court of Parliament ought to give examples to inferiour Tourts for proceeding according to justice, and no inferiour Court could do the like; and they thought that the Bigh Court of Parliament would never do it. But being by the expresse commandement of the king, and pressed by the said Carle to give a direct answer: they said, that if he be attainted by Parliament, it could not come in question afterwards, whether he were called of not called to answer.

a Neta, pro corona. Ror.Parl, Anno 1 H.7. not in print. 7 H.4. cap. 2. the like to H. 4. the right of the Crowne being then in the de fcent from Philip daughter and heir of Lionel Duke of Cla-Vid. 1 H.7.11 13 15 H 8.cap. 12. repealby 28 H. 8. eap.7. & 1 Mar. Pail. I.cap. I. See 13 Eliz,ca.1. in principio. * See Hovenden, pag. 608. for this word Domicel. 6 Rot. Parl. 22 H. 8. The attainder of Tho. Cremwell Earle of Effex.

a Lex Divina.

John 7. v. 15. Deur. c. 17. v. 10.

& ca.19.v.15.

Mat. Par. 18 |0-

Incivile videtur

& contra Canones effe in homi-

nem absentem

convictum nec confessi ferre son-

non vocatum, non

tentiam. Hercof

fe: paulo postca.

Gen.3. 9.Dixit

dominus, Adam ubi cs.Vide Gen-

18 21.Ecclefi-

afticus 11.7,8.

c Praxis Sanctorli

e Rot. Par. 2 H.6.

Jofua. 7.19.22,

23.&c. d Jud.20.3.

nu. 18.

b Act: 25.16.

hannnis 173.

And albeit their opinion was according to law, yet might they have made a better antwer, for by the Statutes of Mag. Carc. ca.29. 5 E.3. cap.9. & 28 E.3. cap.5. Ho man ought to be condemned without antwer, to. which they might have certified, but facta tenent multa, que fieri prohibentur; the act of Attainder being passed by Parliament, did bind, as they resolved. The party against whom this was intended, was never called in question, but the first man after the salver solution, that was so attainted, and never called to answer, was the said Carl of Cser; whereupon that erroneous and vulgar opinion amongst our Historians grew, that he died by the same law which he himself had made. The rehearsall of the said Attainder can work no prejudice, for that I am considerity persuaded, that such honourable and worthy members thall be from time to time of both Houses of Parliament, as never any such Attainder, where the party is south comming, shall be had hereaster without hearing of him.

a Nunquid lex nottra judicat hominem, nisi prius audierit ab ipso, & cognovent quid faciat? Doth our law judge any man, before it hear him and know what he both? b It is not the manner of the R omans to beliver any man to die, before that he which is accused have the accusers face to face, and have licence to answer

to; himfelf concerning the crime laid against him.

c Ait Josua ad Acab, Fili mi, da gloriam domino Deo Israel, & confiteremihi quid feceris, ne abscondas.

d Interrogatus Levita maritus mulieris interfecte quomodo tantum scelus perpetratum ester, &c. And the conclusion is after hearing and discerning the cause,

confider, confult, and then give fentence.

c And as evil was the proceeding in Parliament against Sir John Mortimer, third son of Edmond the second Earl of Parch (descended from Lionell Duke of Clarence) who was indicted of high Areason so, certain words, in effect, that Edmond Earl of Parch should be king by right of inheritance, and that he himself was next rightfull heir to the Trown after the said Earl of Parch; wherefore if the said Earl would not take it upon him, he would: and that he would goe im Wasles, and raise an Army of 20000. men, sc. which indicanent (without any paraignment or pleading) being meerly saigned to blemish the title of the Mortimer, and withall being insufficient in law, as by the same appeareth, was consistently Authority of Parliament: 4 the said Sir John being brought into the Parliament without arraignment or answer, judgement in Parliament was given against him upon the said indicament; That he should be carried to the Tower of London, and drawn through the City to Tiborn, and there hanged, drawn and quartered, his head to be set on London bridge, and his sour quarters on the sour gates of London, as by the Record of Parliament appeareth.

The proceeding in Parliament against Absents.

The ancient law and custome of the Parliament was, that when any man was to be charged in Parliament with any crime or offence, or misdemeanous, the kings Carit was directed to the Sherif to summon and injoin the party to appear before the king in the next Parliament. For example.

Placita in Parliamento domini Regis, Anno B.1. 33. Northampt. Dominus Rexmandavit Vic' quod assumptis secum quatuor de discretioribus & leg' militibus Com' sui in propria persona sua accederet al Nicholaum de Segrave, & ipsum in prasentia pradictorum militum summon' & ex parte domini regis firmiter ei injungeret quod esset coram domino rege in proximo Parliament' suo apud Westm' in primo adventu domini regis ibidem ad audiendam voluntatem ipsius domini regis super hiis, qua tunc ibidem proponere intenderet vers. eum, & ad faciendum & recipiendum ulterius quod curia domini regis consideraret in pramissis. Et vic modo mandavit quod assumptis secum Thoma Wale, Waltero silio Roberti

Cap. 1. The High Court of Parliament.

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de Davientry, Roberto de Gray de Wollaston, & Radulpho de Normavill quatuor milit', & c. in propria persona sua accessit apud Stowe ad manerium predicti Nicholai, et in prasentia eorundem militum summon' predictum Nicholaum, & ei sirmiter injunxit quod esset coram domino rege in isto

Parliamente nunc juxta formam & tenorem mandati pred &c.

Almaricus de Sancto Amando, Magister Johannes de Sancto Amando Willielmus de monte acuto, Richardus Attehaw constabularius castri Oxon' Ricus de Hurle, Thomas de Carleton capellanus, Iohannes de Ros, Iohannes de Trenbrigg, Willielmus Attewarde frater ejus, & Philippus de Wigenton attachiai fuerunt per Vic' in castro Oxon' per pracept' domini regis responsur eidem domino regi in Parliamento suo in Crastino Sancti Mathai Apostoli Anno regni sui xxxiii. super quibusdam criminibus & transgressionibus infra scriptis, & inde per manucaptionem sufficient' adjornat' coram ipso domino rege hic ad hunc diem, scilicet a die Pascha in xv. dies, & c. D. a witt might be directed to the party himself, when any complaint was

made against him, De injuries, gravaminibus, aut molestationibus, so appear in his proper person before the Ling and his Councell, cc. As so, example:

Dominus Rex mandavit breve fuum Roberto de Burgherft in hac verba. Edwardus Dei gratia, &c. Dilecto et fideli suo Roberto de Burghersh constabular' castri sui Dover et custod' suo quinque portuum, Salutem. Quia dilectus nobis in Christo Abbas de Faveresham & Robertus de Gurne balivus suns ejusdem villa coram concilio nostro apud Eborum existente de diversis injuriis, gravaminibus et molestationibus eis per vos voluntar' et absq. causa rationabili multipliciter illatis graves querimonias deposuerunt, petentesinstanter ut eis super hoc fieri faceremus remedium opportunum; propter quod dedimus eis diem coram nobis et concilio nostro à die Pasch. in xv. dies, &c. ad querelas suas pradictas tunc oftendend', et ad faciend' super hos ulterius et recipiend quod Iustitia suaderet : Vobis mandamus, quod in propria persona vestra sitis coram nobis et concilio nostro ad diem pradict prafatis Abbati et balivis suis super pramissis respons' factur' et receptur' quod curia nostra consideraverit in hac parte, & ab injuriis, gravaminibus, molestationibus et districtionibus indebitis prafatis Abbati et balivis [uis interim inferendis penitus desistendo. Et habeatis ibi hoc breve. Teste meipso apud Linliscu xxx. die Ianuarii, Anno regni nostri xxx. Virtute cujus brevis pradictus Robertus venit, et breve illud protulit ad diem in eodem contentum. Et pradictus Abbas venit et querelas suas protulit in quodam rotulo scriptas, et quas in curia hic querelando ostendit et legere fecit, de quibus prima est hac, coc.

Pow they which absent themselves shall be proceeded withall, Vide 50 E.3. nu.37. Adam Buries case, 2, parce Patent. 21 R.2. nu.15,16. Rot. Par. 17 R.2. nu.28. 11 H.4. nu.37,38. 15 H.6. nu.4. 33 H.6. so.17. Set John Pilkingtons case.

And where by order of law a man cannot be attainted of high treason, unless the offence be in law high treason, he ought not to be attainted by generall words of high treason by Authority of Parliament (as sometime both been used) but the high treason ought to be specially expressed, seeing that the Court of Parliament is the highest and most honourable Court of Justice, and ought (as hath been said) give example to inseriour Courts.

There was an Act of Parliament made in the 11 year of Ling H. 7. which had a fair flattering preaintle, pretending to avoid divers mischies, which were, 1. To the high displeasure of Almighty God. 2. The great let of the

Placita coram domino rege, Paf. 33 E.1. Rot. 19. Oxon.

Placita coram Rege apud Cantuar' de Termino Pafe, Anno regni regis E.1.30.
Confimile breve uni fupra cidem Roberto de Burgherfh ad fectam Majoris & Barginum quinque portuum,

15 H.8.ca. 13.
Eliz.Barton, and others. And feethe Act of the Attainder of the Lord Cromwell, Anno 32 H.8. ubi fupra.
A mifchievous Act with a flattering Preamble in 11 H.7.

Common law, and 3. The great let of the wealth of this land: And the portion of that Act tended in the execution contrary, ex diametro, viz. to the high displeasure of Almighty God, the great let, nay the utter subversion of the Common law, and the great let of the wealth of this land, as hereafter thall manifestly appear. Which Act followeth in these words:

11 H.7.ch 3.

He King our Soveraign Lord calling to his remembrance that many good Statutes and Ordinances be made for the punishment of riots, unlawfull affemblies, reteinders in giving and receiving of liveries, figns and tokens unlawfully, extortions, maintenances, imbracery, excessive taking of wages contrary to the Statute of Labourers and Artificers, the use of unlawfull games, inordinate Apparell, and many other great enormities and offences, which been committed and done daily contrary to the good statutes, for many and divers behoofull confiderations feverally made and ordained, to the displeafure of Almighty God, and the great let of the Common law, and wealth of this land, notwithstanding that generally by the Justices of the Peace in every shire within this Realm in the open Sessions is given in charge to enquire of many offences committed contrary to divers of the faid Statutes, and divers enquests thereupon there straitly fworn, and charged before the faid Justices to enquire of the premisses, and therein to present the troth which any letted to be found by imbracery, maintenance, corruption and favour; by occasion wherof the faid Statutes be not, nor cannot be put in due execution: For reformation whereof, for fo much that before this time the faid offences, extortions, contempts, and other the premisses might not, nor as yet may be conveniently punished by the due order of the law, except it were first found and presented by the verdict of twelve men thereto duly Iworn, which for the causes afore rehearsed will not find nor yet present the truth: Wherefore be it by the advice and affent of the Lords Spirituall and Temporall, and the Commons in this present Parliament affembled, and by authority of the same enacted, ordained and established, that from henceforth as well the Justices of Assistin the open Sessions to be holden afore them, as the Justices of Peace in every County of the faid Realm, a upon information for the King before them to be made, have full power and authority by their difcretion to hear and determine all offences and contempts committed and done by any person or persons against the form, Ordinance and effect of any statute made and not repealed, and that the said Justices upon the faid information have full power and authority to award and make like processe against the said offenders and every of them, as they should or might make against such person or persons as been prefent and indicted before them of trespasse done contrary to the Kings peace, and the faid offender, or offenders duly to punish according to the purport, form, and effect of the faid Statutes. Also be it enacted by the faid Authority, that the person which shal give the faid information for the King shall by the discretion of the said Justices content and pay to the said person or persons against whom the said information shall be so given his reasonable costs and dammages in that behalf sustained, if that it be tried or found against him, that so given or maketh

a Upon information without any indiament. b By their diferetion, and not /ecundum legem & consuctudinem Angl. as all proceedings ought Obsolete fatutes and all, and specially fuch as time had so altered from the originall cause of the making thereof, as either they could not at all, or very hardly be observed and kept.

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any such information. Provided always, that any such information extend not to treason, murder, or selony, nor to any other offence, wherefore any person shall lose life, or member, nor to lose by nor upon the same information any lands, tenements, goods or chattels to the party making the same information. Provided also that the said informations shall not extend to any person dwelling in any other shire, then there, as the said information shall be given or made, saving to every person and persons, cities, and towns, all their liberties and franchises to them and every of them of right belonging and appertaining.

But it extended to a Premunire, misprission of treason,&c.

By prefert of this law Empson and Dudley did commit upon the Subject unsufferable pressures and oppressions, and therefore this statute was justly soon after the decease of H.7. repealed at the next Parliament after his decease, by the statute of 1 H.8.ca.6.

A good caveat to Parliaments to leave all causes to be measured by the golden and freight metwand of the law, and not to the incertain and crooked cord of

Difcretion.

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It is not almost credible to sociece, when any Parime, or Fundamentall law of this Realm is altered (as elsewhere hath been observed) what dangerous inconveniences doe follow, which most expessly appeareth by this most unjust and strange Act of 11 H-7. so hereby not only Empson and Pudley themsetves, but such Instices of Peace (corrupt men) as they caused to be authorized, committed most grievous and heavy oppressions and exactions, grinding of the sace of the poor Subjects by penall laws (be they never so obsolete or unsit so; the time) by information only without any presentment or triall by Jury being the ancient birthright of the Subject, but to hear and determine the same by their discretion, instituting such penalty, as the statutes not repealed imposed: These and other like oppressions and exactions by 03 by the means of Empson and Dudley and their instruments, brought infinite treasures to the Kings Toters, whereof the King himself in the end with great grief and compunction repented, as in *another place we have observed.

This statute of 11 H.7. we have recited, and shewed the just inconvenientes thereof, to the end, that the like should never hereaster be attempted in any Court of Parliament. And that others might about the searful end of those two time-servers, Empson and Dudley. Qui corum vestigia insistume, corum ex-

itus perhorrescant.

See the flatute of 8 E.4.ca.2, the Statute of Liveries, an Information, sc. by the discretion of the Judges to fland as an originall, sc. This Act is defer-

bedly repealed.

Vide 12 R.2.cap.13. Punishment by discretion, sc. Vide 5 H.4.ca. 6.8. See the * Commission of Sewers. Discretion ought to be thus described. Discretio est discernere per legem quid six justum. And this description is proved by the Common law of the land, so, when a Jury doe doubt of the law, and describe to doe that which is just, they find the speciall matter, and the entry is, Er super tora materia, &c. petunt discretionem Justiciariorum, and sometime, advisamentum & discretionem Justiciariorum in pramiss. &c. that is, they desire that the Judges would discretion by law what is just, and give judgement acceptingly.

See the 2.part
of the Inflitutes,
W.t.c2-26.See
the Preface to
the 4.part of the
Reports.
The danger enfuing by alteration
of any of the
Maximes of the
law.

1 H.8 ca.6.

* In the Chapter of the Court of Wards and Liveries.

* Lib. 5. fo. 100. Rooks cafe. Lib. 10. fo. 128. &c.

Pl.Com.348. Barnards cafe.

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AEts against the power of the Parliament subsequent bind not.

1 H 4.nu.144. 21 R.z.nu.ze. repealed by 1 H.4. ca.3. 1 H.4.nu.48. Vid.7 H.4.nu.37.

21 R. 2.ca. 16. 21 R.z.nu.44.

t H.4.nu.70.

2 H.4.ca.22. Vide 21 R.2. nu.44.

26 H 8,ca.i. Acts of Parliament ought to be plainly, and clearly, and not cunningly and darkly penned, specially in criminall caufes. * 26 H.8,c2.1. 26 H.8.ca. 13. a By word,&c. this by construction referres to the z.clause. b Shadowed with the Queen or Prince. c Deprive, an obscure word. d Note this word [title] in the former Act. e Parker B. of Cant. Lib. de Antiquitate Brit. Ecclefie. Clerus animo toto obstupuit, nondum enim quid fibi bic novus vellet titulus, aut quorfum tenderet, prospexit, &c. f But this A& lived not long, for twice it was repealed, viz.by 1 E.6. C-12.& 1 Mar.c.t. g What qualities laws ought to have b Isidor. 2 Etymol.

An Article of the Statute made in 11 R.2. cap.5. is, that no person Could at. tempt to revoke any Dedinance then made, is repealed, for that such restraint is against the jurisdiction and power of the Parliament, the liberty of the lub jed, and unreasonable. And like wife the last Will and Testament of King R.1, under the Great Seal, Privy Seal, and Privy Signet, whereby he debiled certain mony, treasure, sc. to his successors upon condition to observe all the Acts and orders at the Parliament holden in Anno 21 of his reign, was hold den unjust and unlawfull, for that it restrained the Soveraign liberty of the Kings his Successors.

Sunday Loads of Parliament (but no Bishops) or fix of them, and certain Unights of thires of the Commons or three of them are authorised by Authority of Parliament to examine, answer, and plainly determine all the Petitions erbibited in that Parliament, and the matters contained in the same by their good ad. vice and discretion, to. The high power of a Parliament to be committed to a few is holden to be against the dignity of a Parliament, and that no such Com-

million ought to be granted.

An Ad in 11 R.2.ca.3. that no man against whom any judgment, or forfele ture was given thould fue for pardon or grace, sc. was holden to be unreasonable without example, and against the law and custome of Parliament, and there fore that branch by Authority of Parliament was adnichaled, and made boid.

Also I find that in times past the Houses of Parliament have not been clearly bealt withall, but by cunning artifice of words utterly deceived, and that in tales of greatest moment, even in case of High Areason, as taking one eram

ple for a warning in like cases hereafter.

Bing H. 8. after the Clergy of England had in their Convocations acknow ledged him Supream Bead of the Church of England, thought it no difficult matter to have the same corroborated and confirmed by Authority of Paris ment, but withall fecretly and earnestly desired that the impugners and deniers thereof, though it were but by word, might incur the offence of High Areason, and finding the one, that is, the acknowledgement of his Supremacy likely to have good passage, and having little hope upon that which he found to effect the other concerning High Treason, sought to have it passe in some other Ad by ivozds closely cowched, though the former Act of Supremacy had been the proper place. * And therefore in the Act of recognition of his Supremacy it is enacted, that he thould have annered and united to the Crown of this Realm the Title and Stile thereof: * and afterwards towards the end of the Parlia ment, abill was preferred whereby many offences be bigh Treason, and there by it is enacted, That if any person or persons by a word or writing, I practise or attempt any bodily harm to the King, the b Queen or their heirs apparant, 2 or to deprive them or any of them, of their dignity, dittle, or name of their royall estates, 3 or that the King should be an 'Heretique, Schismatique, Tyrans, Infidell, or Usurper of the Crown, &c. that every such persons so offending should be adjudged Traytors,&c. So as now by this latter Act, he that by wood of witting attempts to deprive the King of the title of his royall effate is a Traps to, but the former At had annered to the Crown the title of the Mile of Supremacy, and therefore he that should by word or writing attempt to deprive the King thereof Mould be a Traptoz. And supon this law of 26 H.S.ca. 13. for denying of the Kings Supremacy divers luffered death as in case of High Treafon, whereas all laws, especially penall, and principally those that are penall in the highest degree sought to be so plainly and perspicuously penned, as every Member of both Houses may understand the same, and according to his know ledge and conscience give his voice. h Erit autem lex honesta, justa, possibilis, secundum naturam & secundum consuetudinem patrix, temporique conveniens, necessaria & utilis, manisesta quoque, ne aliquid per obscuritatem incautum cap-

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tione contrudat, nullo privato commodo, sed pro communi civium utilitate conscripta, ideo in ipsa constitutione ista consideranda sunt, quia cum leges infiture fuerint non erit liberum arbitrium judicare de ipfis, fed oportebit judicare fecundum ipfas, which be excellent rules to; all Parliaments to follow. But the Statute of 5 Eliz. ca. 1. hath concerning the Supremacy Dealt plain. ly and perspicuously as by the same appeareth.

5 Eliz.ca.1. Exod.4.16.Tu, i. Mofes erusci i.

Auron, in biis que ad deum pertinent, &c. Exod. 32.15, 16. Mofet cuftos utrinfque tabule. Numb. 10. 1, 2. Mofes cullos utriusque tube. Joshua 14. 1. Congregavit Josus, &c. 28. dimist. 1 Chron. 15.4. 1 Chron. 16.43. Rex David. 2 Chron. 5.1. Rex Solomon. 2 Chron. 19.15. &c. Ezchias. Nota. 1 Sam. 15.77 Et ait Samuel ad Saul, nonne cum proulus effer caput in tribubus factus es? and the Tribe of Levi was one. 1 Maccab. 14. 44. See hereafter ca.74.

And albeit it appeareth by these examples, and many other that might be Subsequent Parbought, what transcendent power and authority this Court of Barliament liaments cannot bath, pet though divers Parliaments have attempted to barre, restrain, fulpend, qualifie, or make boid subsequent Parliaments, pet could they never effed it, for the latter Parliament hath ever power to abrogate, suspend, qualitie, 11 H.7.ca. 1. erplain, or make boid the former in the whole or in any part thereof, not withfran. 28 H.S.ca. 17. ding any words of restraint, prohibition, or penalty in the former: for it is a marine in the law of the Barliament , quod leges posteriores priores contrarias B. of Cast.cafe. abrogant.

be restrained by the former. 43 E.3.ca.1.

AEts of Parliament enrolled in other Courts.

For the better observation of any Aa of Parliament enacted for the Common. wealth, or of a Betition of right, or Judgment in Parliament, or the like, and to incourage the Judges that the same may be duly executed, the same may be inrolled in the Courts of Austice in this manner. The teno; of the Record must he removed into the Chancerp by writ of Certiorari, and delivered into the Aings Bench by the hands of the Chancelo: 02 Lozd Reeper, and fent by Mictimus to the Court of Common pleas, and by like Mirtimus into the Erchequer, and the hing by his wait may command any Court to observe and firmly to keep such an Act of Parliament, as it appeareth by these two precedents. Ex Rotalo Clans. Amo 28 E. 1, m. 2. Dorf. Rex Thefaurar' & Baronibus fuit de Scaccar' Salute. Quia volumus quod Magna Carra domini Henrici quondam Regis Anglia patris postri de libertatibus Angliz quam confirmavimus & etiam inpovavimus in omnibus & fingulis articulis suis firmiter & inviolabiliter observetur. Vobis mandamus quod Carram prædictam in omnibus & fingulis suis articulis quantum in vobis est coram vobis in dicto Scaccario observari faciatis

firmiter & teneri. T.R. apud Dunfres 23. die Octobris. Rex Justic' suis de Banco Salutem: Cum in alleviationem gravaminum qua populus regni nostri occasione guerrarum hactenus toleravit, ae in emendationem flatus ejusdem populi, nec non ut ex hoe se exhibeat ad nostra servicia promptiorem, nobisque in agendis nostris libentius subsidium faciat in futurum, quosdam articulos eidem populo plurimum (annuente Domino) profuturos de gratia nostra speciali duxerimus concedendos. Vobis mandamus quod dictos articulos quos vobis mictimus sigillo nostro consignatos coram vobis in banco pradicto quantum in vobis est juxta vim formam & estectum eorundem observari faciatis firmiter & teneri. T.R. apud Dunfres 30. die Octobris.

Every Member of the Parliament ought to come.

Every Lord Spirituall and Temporall, and every Anight, Citizen and Burgelle thall upon Summons some to the Parliament, ercept be can reafonably, and honeftly excuse himself, or else he that be amerced, sc. that is, respedively,a Lord by the Lords, and one of the Commons by the Commons.

By the Statute of 6 H.S.ca. 16. no Unight, Citizen of Burgelle of the Boufe of Commons thall depart from the Parliament without licence of the Speaker and Commons, the same to be entred of record in the book of the Clerk of the Parliament, upon pain to lofe their wages.

Int. Placita Parl. 18 E.1.Rot.18. Ibid. 20 E.I. Magnum Placitů int. Com. Gloc' & Com, Heref. & Effex irr. Rot. Clauf.An. 28 E.I. in Dorf. irr. le Magna Carra. Paich. 33 B.1. Rot. Par. Nich. Segraves cafe, Ror.23. Tr. 12 E.z. Ro. 60. de itr. Petition in Parliament, al

g R. 2. Star. 2. C.4. Rot. Par 31 H.6. nu. 46. fines were let,&c. If any of the Lords or Commons come not, &c. they shall be fined.

The High Court of Parliament. Cap,

Vi. 3 E.3.18.fup.
If any of the
Lords of Commons depart, &c.
they shal be fined
1 & 2 Ph. & M.
Rot. 43. ut fup.
2 5 R. 2. start. 2.ca.

If a Lord depart from Parliament without license, it is an offence done ont of the Parliament, and is finable by the Lords: and so it is of a Hember of the House of Commons, he may be fined by the House of Commons, Vide 1 & 2 Ph, & Mar, coram rege. Roc. 48. divers informations by the Attorny Generall so, departing without license, ut supra.

* The punishment of Sheriffes for their negligence in retorning of Writs. for leaving out of their retorns any City or Borough which ought to fend Citi

zens and Burgelles.

Advice concerning new and plausible projects and offers in Parliament.

Sce before pa.14 Rot. Par.13 E.3.

Wahen any plaulible project is made in Parliament to draw the Lords and Commons to affent to any Act (especially in matters of weight and importance) if both Boules Do give upon the matter projected and promifed their confent, it thall be most necessary, they being trusted for the Common wealth, to have the matter projected and promifed (which moved the Houles to confent) to be effect blifbed in the same act, left the benefit of the Act be taken , and the matter ploies aed and promifed never performed, and fo the Houses of Parliament performe not the trust reposed in them. As it fell out (taking one example for many) in the reigne of H. 8. On the Bings behalfe the Dembers of both Boufes were in formed in Parliament, that no King or Kingdome was fafe, but where the King had three abilities. First, To live of his own, and able to defend his kingdom upon any sudden invasion of insurrection. 2. To aide his confederates, otherwife they would never affift him. 3. To reward his well deferving fervants. Row the project was, that if the Warliament would give unto him all the Ale bies, Priories, Friories, Runneries, and other Ponalteries, that for ever in time then to come, he would take order that the same should not be converted to private use: But first, that his Erchequer for the purposes aforcsaid should be enriched. Secondly, the Kinadome Arenathened by a continuall maintenance of 40 thousand well trained souldiers with skilfull Captains and Commanders, Thirdly, for the benefit and ease of the Subject, who never afterwards is was projected) in any time to come should be charged with Subsidies, Fifteenths, Loanes, or other common aides. Fourthly, left the honour of the Realing thould receive any diminution of honour by the dissolution of the said Monasteries, then being 29 Lozds of Parliament of the Abbots and Priors (that held of the king per Baroniam , tohereof more in the nert leafe) that the Bing would create a number of Pobles, which we omit. The faid Monasteries were given to the King by authority of divers Ads of Parliament, but no provision was therein made for the faid project, or any part thereof; * only ad faciend' populum these post festions were given to the King his heirs and successors to do and use therewith his and their own wils, to the pleasure of Almighry God, and the honour and profit of the Realme.

27 H.S. de monafteries, & 31 H.8 eap. 13. 32 H.8. eap. 14. 27 H.8. cap. 28.

32 H.8.ca. 23.50. 34 H 8.cap.16.& 27. 37 H.8.cap.24. Pow observe the Cataltrophe; in the same Parliament of 32 H. 8. when the great and opulent Priory of Saint Iohns of Ierusalem was given to the Ling, he demanded and had a Subsidie both of the Clergie and Laity. And the like he had in 34 H.8, and in 37 H. 8, he had another Subsidie. And since the dissolution of the said Ponasteries he exacted divers loanes, and against law received the same.

Whom the King may call to the Lords House of Parliament.

Rot. Clauf. in dorf. 10 H. 7.
20 Septemb. *
Writs to divers ad ordinem militime de Batneo fufcipieend. juxt. 1 autiour confuctudinen

If the King by his Writ calleth any Knight of Equire to be a Lord of the Parliament, he cannot refuse to serve the King there in communi illo Concilio, for the good of his country. But if the King had called an * Abbot, Prior, or other regular Prelate by Writ to the Parliament to the Common Councell of the Realme, if he held not of the King per Baroniam, he might resuse to serve in

quam consuctudinem in creatione ustatam. * Of regular Prelats that hold per Baroniam.

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Bartiament, because quoad secularia, he was mortuus in lege, and therefore not capable to have place and voice in Barliament, unleffe he did hold per Baroniam, and were to that Common Councell called by Whit, which made him capable : and though fuch a Poelat Regular had been often called by Writ, and had de fato hat place & boice in Barliament, pet if in rei veritate he held not per Baronis am, he ought to be discharged of that ferbice, and to sit in Parliament no more, for that the Abby of Leicefter was founded by Robert Firz-Robet Carle of Leicester (albeit the patronage came to the Crowne by the forfeiture of Simon de Mountford Carle of Leic.) pet being of a subjects foundation, it could not be holden per Baroniam , and therefore the Abbot had no capacity to be called to the Parliament, and thereupon the Ling Did grant, quod idem Abbas & successiores sui de veniendo ad Parliamenta & concilia nostra vel haredum nostrorum quieti fint & exonerati imperpetuum.

De jure & consuetudine Anglia ad Archidiaconatum Cantuariensem, &c. Abbates, Priores, aliosq; Prælatos quoscunque per Baroniam de domino rege tenentes pertinet in Parliamentis regiis quibuscunque ut Pares regni pradicti personaliter interesse, ibiq; de regni negotiis ac aliis tractari consuetis cum cateris dicti regni Paribus ac aliis ibidem jus interessendi habentibus consulere & tractare, ordinare, statuere, & diffinire, ac extera facere que Parliamenti tempore ibid.

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Do man ought to fit in that High Court of Warliament, but be that hath right to lit there : for it is not only a perforall offence in him that litteth there without authority, but a publick offence to the Court of Parliament, and confequently to the whole Realme. But all the cases abovesato, and others that might be remembred touching this point, as little Rivers, do flow from the fountaine of Modus tenendi Parliamentum, where it is fato. Ad Parliamentum fommoneri & venire debent ratione tenura fox omnes & finguli Archiepifc', Episcopi, Abbates, Priores & alii majores cleri qui tenent per comitatum vel baroniam ratione hujusmodi tenura, & nulli minores, nisi corum prasentia necessaria velutilis reputetur, &c.

One rare and france creation of a Lord regular of Parliament we cannot palleover, which was, That King H.8. in the fifth year of his reign, by his I etfers Batents under the Breat Seale, did grant unto Richard Banham Abbot of Tabeltock in the County of Devon, being of his patronage, and to the successors of the fait Abbot, ut corum quilibet, qui pro tempore ibidem fuerit Abbas, fit & erit unus de spiritualibus & religiosis dominis Parliamenti nostri, hæredum & successorum nostrorum, gaudend'honore, privilegio & libertatibus ejusdem.

By that which hath been said, it appeareth that this creation of a regular Loid of Parliament was boide, for that the Abbot was neither Baro, nor had Baroniam, &c. And if the King might create Abbots of Pators Lords of Parliament in this manner, by the same reason he might create Deans and Arch-

beacens Lords of Parliament, which without question he cannot.

By the Act of Parliament of 10 H.2. salled the Actie of Clarendon, it is de: 10 H.2. csp. 11. tlared, Ut pars consuetudinum & libertatum antecessorum Regis, viz, Henrici primi & aliorum, qua observari debent in regno & ab omnibus teneri, viz. Archiepiscopi, Episcopi, & universa persona regni, qui de rege tenent in capite habeant possessiones suas de rege seut baroniamis inde respondeant Justiciariis & ministris regis, & sequantur & faciant omnes consuetudines regias, & sicut cateri barones debent interesse judiciis Curiæ regis cum baronibus, cuousq; perveniatur Rot. Parl. 11 & add minutionem membrorum veladmortem. So as by this Act a tenure of 11 R. 1. the king in chiefe was in equipage with a Barony.

And King John by his great Charter of liberties made Anno 170 fhis reigne, granteth, Quod faciemus summoneri Archiepiscopos, Episcopos, Abbates, Comites, & Majores Barones regni fingulatim per literas nostras. Dut of this Clause we are to observe these things: First, that these Barons called here Majores, were Loads of Parliament, and called thereunto by the kings Write. Decondly, that they were called Majores comparatively, and that was in respect

And so was it adjudged in the Parliament at York, Ap. 11 E. 2 in the case of the Abbot of S. Iames extra Northamp. Stanf. pl. cor. 153. 2. a Rot.pat. An. 26 E.3. part 1. m. 22 See Rot, clauf. in dorf. 11 E. 3. part 1.m.11. Religious que teignont per Barony font tenus de venier au Parliament Vid, ibid.13 E.3. part 3.m. 28 & 1. b Ror.par.11 R.2 part 1. m. 2. Ar-

Modus renendi Parl, ca.z. This is infra ex-Affise of Claren-

Mat. Par.97 Af. fila de Clarendon

Carr. libertat. a Rege Johanne Anno 17 regni fui concest. Mar.

Nota, a Knights fee is the fervice of a Knight, that is of a man at Arms, or of war. Hereof fee the fecond part of the Instit. cap.de Militibus, 1 E.2. Inter leges Edw. eap.21. Ib.ca.9. * 1. Curiam Baronis, Glanv.li.8. cap. 11. acc Bract. li.3.154.b. Camd, Brit, 121.

Indorf. clauf. An. 46 E.z.nu.4.

milit.

Rot. clauf. 7 R.z.

nu. 1. de expensis

Regist. fo. 192.2.

Diota. Veniendo,

Morando, Rede-

undo, per diem 45.

Par. 51 E.3.nu.45 35 H.8.cap.1. See the ancient

Treatile, De modo

a Regift, f. 192.2

See the far. of 12 R.2.ca.12.&

fce 23 H.6.ca.11.

how the Sheriffe

shall levie the

Avowrie 260.

what the Com-

b Nota, de com-

mon law was.

For the legall

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this word Com-

d Regist. 261.

F.N.B. 14 E.

e Regist.191,192.

12 R.2. ca.12. f 34 H.8.ca.24.

7 H.6.35 b.

munitate. Vid. Sup. pa.r.

mons. c Rot. Par. 1 R.2

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fame. Sec 8 R.2. tit.

tenendi Parl.

of others which were called Barones minores, 03 Nobiles minores, and were Freeholders that " hold by Unights Derbice and Cleunge. i. Servicium feuti, M three forts, viz. Milites, Armigeri, & Generoli, Anights, Clquires, and Cen tlehomes, 03 Bentlemen. Thele Barones minores were Logos of Mannoss, and had not the dignity of Loads, but had Courts of their Freeholders, which to this day are called Court Barons, Curiz Baroniar'. Df this Baron it is fait inthat lato made by Bing Edward before the Conquest : Barones qui fuam habent "Curiam de suis hominibus, videant ut sie de eis agant, quatenus erga deum reatum non incurrant, & regem non offendant.

Baro à Bar, Germanica lingua liberum & sui juris significat, 1. which agreet well with that which bath been faid. 1. That Baro major was called Baro major regni. 3. That every greater Baron was feverally fummoned by the kings

Wirit, which continueth to this day.

The fees of the Knights, Citizens, and Burgesses of Parliament.

First, for the Anight of any County it is 4 s. per diem, and so it hathbeen time out of mind, which is particularly expedied in many Records, but let us take one in hac verba, Johannes Shordich unus militum comitatus Middlefer venientium ad Parliamentum tent'apud Westm'in Cro, Animarum ultim'prz. teris' habet allocationem 4 li. & 4 s. pro 21 diebus pro expensis suis veniendo ad Parliament' prædict' ibid. morando, & exinde ad propria redeundo, capiendo per diem 4 s. Tefte Rege apud Westm' 24 die Novemb. Anno 46. Chery Cittien and Burgelle is to have 2 s. per diem, ut supra, mutatis mutandis.

a Rota the Warit De expensis militum, &c. doth comprehend the summe accou bing to the above fait computation, and a commandement to the Sheriffe to levis the same b De communicate comitatus prædict' cam infra libertates, quamextra (Civitatibus & Burgis de quibus cives & burgenses ad parliamentum nostrum, &c. venerunt duntaxat exceptis.) The like Warits to the Sheriffes De expensiscivi-

um & Burgenfium, to levie the fame in Cities and Boroughs.

c An. 1 R. 2, pu. 1 1. the Commons petitioned in Parliament, that all persons having Lap fee might contribute to the charge of the Unights, and to all tallaces. The Bing answered, The Loads of the Realm wil not lose their old liberties, Pote the Wirit is De communitate.

d Allo there is a Writ in the register De expensis militis non levandis ab hominib' de antiquo dnico, nec ab nativis. c Dther discharges De expensis militu.

f For the wages of the Unights of the Shire of Cambridge fee the Catute of

34 H. 8. cap. 24. Consimile pro Insula de Ely,&c.

g H. 4. An. 14. of his reigne fummoned a Parliament Cro. Purificationis, and he deceased 20 Martii following, so as the Parliament was distolved by his de cease. Thereupon it was a question, whether the Unights and Burgestes should have their wages feeing nothing passed in that Parliament. And it was resolved, that if upon view of the Kings h Records any like presidents may be found, allowances of their fees that be made. Also the Tlergy were contributory by reason of their Benefices to the expences of the procurators of the Clergy.

k But Chaplains which are Wasters of the Chancery and attendants at the Parliament, that not be contributory by reason of their Benefices to the expences of the Clergy, as by the Register ubi supra appears: and this was by an Ad of Parliament made in * 4 E. 3. which in general woods is recited in the Writ

directed to the Archideacon for their discharge.

9 H.6. nu.46. g Rot. Par. H. snu. 26. b Nota, for presidents. i Regist. 161. F.N.B. 239. 2. 4 Vid. Sup. pa.4,5. * Parl. An. 4 E.3. apud Winton, whereof there is no Roll now remaining.

Who be eligible to be a Knight, Citizen, or Burgesse of Parliament.

See the ftar,of Vid. fup. pa 4.5. Rot. brev. 7 R.z.

A knight Baneret being no Lord of Barliament is eligible to be knight, Ci tizen, or Burgede of the House of Commons being under the degree of a Baron, who is of the lowest degree of the Lords House. But Thomas Camois was not

only a linight Baneret, but a Baron and Lord of Parliament in Anno 7 R. 2. and ferved in that parliament as a Baron of the Realme, and therefore as of Dorf. clauf., R.2 a thing notozious he was discharged. Dne under the age of 21 pears is not eligible, neither can any Logo of Parliament fit there untill he be of the full age of 21 pears.

m.10.& 37.

An Alien cannot be cleded of the Parliament , tecause he is not the kings liene fubjed, and foit is albeit be be made Denigen by Letters Patents, ac. for thereby he is made quali, feu ranquam ligeus; but that will not ferve, for he must te ligeus revera, and not quafi, &c. And we have had fuch an one chofen and difallowed by the Boule of Commons, because such a person can hold no place of ju-Dicature: but if an Alien be naturalized by Parliament, then he is eligible to

Vi.ftat.de 1 Mar.

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But it is objected that Gilbert de Umphrevill Carle of Andgos in Scot 39 E.3. 35,36. land, was called by the Kings Whrit to the Parliament in 39 E. 3. by the name of Gilbert Carle of Andgos : and in a Wirit of Ravifhment of Ward brought against him, by the name of Gilbert Umphrevill Chivaler, he pleaded to the Wirit, that he was Carle of Andgos not named in the Wirit : and for that he was fummoned to every Parliament by the name of the Carle of Andgos, and the King fent to him a Writ of Barliament under the Breat Seale, as to a Peer of the land, by judgement of the Court the Writ did abate. We have fearthed for the truth of this cafe, and do finde it in the Plea Rols in this manner.

Richard de Umphrevill Baron of Probhowe and Redesdale in the County of Northumberland, had iffue Gilbert, who after the death of his Father was a Baron of this Realm, and in the reign of H. 3. married with Mawde daughter and heir of the Carl of Andgos in Scotland, who by her had iffue Gilbert, who was Carle of Andgos as heir to his mother, and Baron of Probhow and Redef. dale as heir to his father: he fat in Parliament upon summons by Writin 27 E. 1. 28 E. 1. 30 E. 1. 35 E. 1. 1 E. 2. and 2 E. 2. by the name of Gilbert All this doth ap-Carle of Androg. Robert his some sat in Parliament, Anno 12 E. 2. by the fame name of dignity, and fo forth, all E. the Seconds reign. And Gilbert his some sat in Parliament in 6 E. 3. and in every Parliament following untill, and in 4 R. 2. by the fame name. And in Gilbert his fonne (who deceased in Anno 15 H. 6) that firname of Umphrevil ceased. Hereby it appeareth that the said Richard Umphrevil and his posterity, from whence soever they originally defrended, were liege Englithmen: for if they had been Aliens, they could not have enjoyed the Loedthips of Prodholve, Otterborne, Harbottle, and Redesdale in England, not the Barony of Lime in Lancathire, which the two late Gilberts enjoyed. And note, the Book in 39 E. 3. concludeth, that Gilbert Umphrevil was summoned to the Parliament under the Ozeat Seale, Come un Pier del

pear in the Rols of Parliament in all the feverall

A Bilhop elect may fit in Parliament as a Lord thereof.

Thefe two were commenly called the Earles of Kime.

Hil. 18 E.1.fo.4. nu. 105.

Of Knights, Citizens and Burgesses of Parliament.

Pone of the Judges of the Kings Bench, or Common Pleas, or Barons of the Orchequer that have judiciall places can be chosen Unight, Citizen. 02 Burgelle of Parliament, as it is now holden, because they be allistants in the Lozds House; & pet you may reade in the "Parliament Roll, An. 31 H. 6. that Thorp Baron of the Orchequer was Speaker of the Parliament. But any that have judiciall places in the Court of Wards, Court of Duchie, or other Courts Occlefiafticall, og Tivill, being no Lord of Parliament, are eligible.

a Rone of the Clergy, though he be of the lowest Deber, are eligible to be Unight, Citizen, or Burgeffe of Parliament, because they are of another body, viz. of the

A man attainted of treason or selong, te. is not eligible: for concerning the election of two Bnights, the words of the Carithe, Duos milites gladies cinctos magis idoneos, & difereros eligi fac. And for the election of Citizens & Burgeffes,

* Ror. P:r. 31 H.6 nu. 26,27, 28. Note, he could not be Speaker unlesse he were Knight of the Shire, &c. in the bock of Burgeiles of the House of Commons. a Alexan. Nowels case, who after was Deane of Pauls being a Prebend, 1 Mar.

Convocation.

Rot. Par. 46 E.3.

5 R. 2.ftat. 2.ca.4.

Rot. Clauf. Anno

See before pa. 10. 4 Petry Acts palled at this Parlia-

ment of little or

no effect, as by

the fame appears.

Rot. Parl. 50 E.3. nu.83. an Ordi-

nance that no

Sheriffe should

peace, &c. bound

not the subject untill a statute

made i Mar.c.3.

be Justice of

7 H.4. ca.15.

6 H. 4.

the words of the West be, Duos, &c. de discretioribus & magis sufficientibus, which they cannot be said to be, when they are attainted of treason or felony, tc.
Onaiors and Bailistes of Downes Corporate are elegible against the opinion

fit Brook, Anno 38 H. 8. tit' Parliament.

Any of the protoffion of the Common Law, and which is in practice of the fame, is eligible. For he which is eligible of common right cannot be disabled by the said Drdinance in Parliament in the Lords House in 46 E. 3. unlesse that been by Act of Parliament: and if it had been by authority of Parliament, yet had the same been adrogated by the said statutes of 5 R. 2. star. 2. cap. 2. and 7 H. 4. cap. 15. which are generall lawes without any exception, as hath been said.

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At a Parliament holden at Coventry Anno 6 H. 4. the Parliament was summoned by Writ (and by colour of the said Didinance) it was sozbidden, that no Lawyer should be chosen knight, Citizen, or Burgesse, by reason whereof this Parliament was fruitlesse, and never a good law made thereat, and therefore called Indoctum Parliamentum, or Lack-learning Parliament. And seeing these Writs were against law, Lawyers ever since (for the great and good service of the Common-wealth) have been eligible: sor, as it hath been said, the Writs of Parliament cannot be altered without an Act of Parliament: and albeit the prohibitory clause had been inserted in the Writ, yet being against law, Lawyers were of right eligible, and might have been elected knight, Citizen, or Burgesse in that Parliament of 6 H. 4.

By speciall order of the House of Commons the Attorny Benerall is noteli-

gible to be a Dember of the Boufe of Commons.

At the Parliament holden i Caroli Regis, the Sheriffe for the County of Buckingham was chosen knight for the County of Borff, and returned into the Chancery: and having a Subpena out of the Chancery served upon him, at the suit of the Lady C, pendence Parliamento, upon motion, he had the priviledge of Darliament allowed unto him by the judgement of the whole House of Commons.

Who shall be Electors of Knights, Citizens, and Burgesses, how and when: and of Elections.

mer of election, and therein the duty of the Sheriffe, you may reade in the politice lawes of 7 H.4. cap. 15. 11 H.4. cap. 1. 1 H.5. cap. 1. 8 H.6. cap. 7. 10 H.6. ca. 23 H.6. cap. 15. 6 H.6. cap. 4. &c. which need not here be particularly rehearled.

Po knight, Citizen of Burgelle can fit in Parliament beforche hath taken

the Dath of Supremacy.

Vide Rot. Claus. 7 R. 2. 7 Octobris in Dors. Sir Thomas Moreville elected one of the Unights southe Country of Hertsoud, Ibid. James Berners thosen to serve in Barliament, and both of them discharged. See the Record.

Po election can be made of any unight of the Shire but between 8 and 11 of the clock in the forenoone: but if the election be begun within that time, and cannot be determined within those hours the election may be made after.

For the election of the Unights, if the party or the Freeholders demand the Poll, the Sheriffe cannot deny the scruting, for he cannot discerne who be Freeholders by the view: and though the party would wave the Poll, yet the Sheriffe must proceed in the scruting.

It the King doth newly incorporate an ancient Borough (which fent Burgels ses to the Parliament) and granteth that certain selected Burgelles shall make election of the Burgelles of Parliament, where all the Burgelles elected before, this Charter taketh not away the election of the other Burgelles. And so, if a City, ic, hath power to make Dedinances, they cannot make an Dedinance that a less number shall cleat Burgelles, so, the Parliament then made the election

5 Eliz,cap.1.

before; for free elections of pembers of the high Court of Parliament are probono publico, and not to be compared to other cafes of election of Paiors, Balliffes, ec. of Corporations, ec.

If one be buly elected Bright, Citizen, 02 Burgelle, and the Sheriffe returne Rot. Parl. 5 H.4. mother, the returne must be reformed, and amended by the Sheriffe : and he that nu.38. is buly elected must be inserted : for the election in these cases is the foundation,

Exoriginal grant or by cultome, a feleded number of Burgeffes may elect and

binde the relidue.

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Concerning Charters of Exemption.

The Bing cannot grant a Charter of exemption to any man to be freed from election of Unight, Citizen, 02 Burgelle of the Parliament (as he may do of fome inferiour Office og places) because the elections of them ought to be free, and his Pasch. 3 E.3. fo. 19 attendance is for the fervice of the whole Realme, and for the benefit of the Bing ticcoron. F. 161. and his people, and the whole Common-wealth hath an interest therein : and therefore a Charter of eremption that king H. 6. had made to the Citizens of 29 H.6. cap. 3-Dork of eremption in that cafe, was by Act of Parliament enaced and declared to be poide. And though we finde some presidents that Lords of Barliament have fued out Charters of exemption from their fervice in Parliament, pet those Charters are holden to be void: for though they be not eligible, as is aforefaid, pet their fervice in Parliament is for the whole Realme, and for the benefit of the King and his people, of which fervice he cannot be exempted by any Letters Patents. And if he hath lafam phancafiam or be extremely fick, or the like, thefe be good causes of his excuse in not comming, but no cause of exemption, for he map recover his memory and health, tc. So as the faid presidents were grants de fa- 39 F.3.15. to, not de jure: for if the Bing cannot grant a Charter of exemption from be= 34 H.6.25. ing of the grand Affige in a Wirit of right, 02 of a Jury in an Attaint for the mif. 35 H.6.42. thiefe that may follow in those pathate actions, a forciori, he cannot grant and eremption to a Lord of Parliament; for his fervice in Parliament is publick for the whole Realme. But if any Lord of Parliament be fo aged, impotent, or fick, as he cannot conveniently without great danger travell to the High Court of Barliament, he may have license of the King under the Breat Seale to be abfent from the same during the continuance or prorogation thereof: but if the rehearfall be not true, or if he recover his health, so as he become able to travell, he mult attend in Parliament. De without any such license obtained, if he be so aged, impotent, or fick, as is aforefaid, and pet is amerced for his absence, he map reasonably and honeftly excuse himselse by the statute of 5 R. 2.

After the precept of the Sheriffe directed to the City or Borough for making of election, there ought secundum legem & confuerudinem Parliam. to te given a convenient time for the day of the election; and fufficient warning given to the Titizens or Burgelles that have voices, that they may be prefent : otherwise the election is not good, unlesse such as have voyces doe take notice of themselves

and be present at the election.

Any election or voyces given before the precept be read and published, are boid and of no force: for the same cleators after the precept read and published may make a new election and alter their voyces, fecundum legem & confuerudinem

Thus much have we thought good to let down concerning knights, Citizens, and Burgeffes, because much time is spent in Parliament concerning the right of elections, ac. which might more profitably be imployed pro bono pub-

Pow to treat more in particular (as it hath been much defired) of the lawes, customes, liberties and priviledges of this Court of Parliament (which are the bery heartstrings of the Common-wealth, whereof we have remembred some: and you may see some * sew other examples in the margent too long here to be Rot.Parl. 11 R.2.

See l'efore pag. 34,25. 16 3.2. Rot. Clauf. in dorf.

1 H. 4.nu. 143. 2 H.4.nu. 11. 2 H.4.ca. 1. Rot. Parl. 9 H 4. Indemnity des Scigniours & Commons. 1 H.5.nu.g cap. 1. 4 H.S.ca, S. verf. finem. a generall law. 6 H.S. c. 6. in the Preamb. rehearled)

Rot. pat. 1 part. 11 E.z. Rot.pat. 4 parr. 1 F.4.m. 15. pro Do. Beauchamp. Rot.pat.2 F.4. part 2.m.2.pro Dom. Veley.

5 R.2.C.4.flat.1.

a Rot. Parl. 5 H. 4
no. 12.
23 H. 6. no. 45.
27 H. 6. no. 18.
31 H. 6. no. 16. 27
Lamb. inter te
ges Edw. (or fefforn 5ca. 3. Ad lynedn., ad capitula
venicus bus, five
fummoniti fumonity five
five per fe quid
sgendu h. buernit,
fit fumma pax.

rehearled) would take up a whole Holume of it felfe : certain it is, as hath been fait, that Curia Parliamenti fuis propriis legibus subsistit.

All the Inflices of England and Barons of the Erchequer are adiffants to the Loods to informe them of the Common law, and thereunto are called feverally by Arit. a Peither doth it belong to them (as both been faid) to judged any law, custome, or priviledge of Parliament. And to fay the truth, the labes, customes, liberties, and priviledges of Parliament are better to be learned of the Rols of Parliament, and other Records, and by presidents and continual experience, then can be expressed by any one mans pen.

Per varios actus legem experientia fecit.

Multa multo exercitamentis facilius, quam regulis percipies.

Consultations in Parliament for maintenance of the Navie.

Rot Pail 45 E.3.
Du.32.
The decay of the
Navy.

In many Parliaments confultations have been had so; the maintenance of the Paris of England, and remedies provided against decay of the same: as taking one example so; many. In the Parliament holden in Anno 45 E.3, the Commons amongst their petitions do assirme, that the decay of the Pavy dothards by three causes. First, so, that sundry mens thips are seised so, the Kinglong before they serve, whereby the owners are driven at their charges to find their Mariners, to their undoing. Secondly, so, that Herchants, the nourishers of the Pavy, are of restrained in their shipping, whereby Pariners are driven to set other trades and livings. Thirdly, so, that the Haisers of the Kings ships do take up Hasers of other ships as good as their selves are, whereby the most of those ships do lye still, and the Pariners entorced to seek new livings: whereof they prayed remedy. To this petition of right the Kings royall answer was, That he would provide remedy.

The Kings Navy

The Kings Raby erceeds all others in the world for three things, viz. beauty, ftrength, and latety. For teauty, they are so many Royall Palaces: for ftrength (no part of the world having such Iron and Timber as England hath) so many moving Castles and Barbicaus: And sor safety, they are the most desensive wals of the Realm. Amongst the thips of other Pations, they are like Lions amongst filly Beasts, or Falcons amongst fearfull sowle.

In the reign of Queen Elizabeth (I being then acquainted with this has note) there were 33 belides Pinnaces; which so garded and regarded the nationation of the Werchants, as they had safe vent so; their commodities, and trate and traffick flourished. A worthy subject so; Parliaments to take into consideration, and to provide remedy as often as need shall require. For navigation, so Gen. 6.14. Sapient. 14.6. Remp. quasi navem existimate debemus, quasion nimit manibus officios; indiget, &c. A leak in a ship is timely to be repaired: For as it is in the natural body of Pan, so it is in the politick body of the Common wealth. Non morbus in plerify; sed morbi neglecta curatio corpus inresect. And thus much so; consultations in Parliament concerning the Pavyos England.

* Patricius, lib.5. De influctione Reipublica.

See the first part of the Institutes. Sect. 164. verb. [Veigne les Burgeses al Parliament.] And there have been fince the Conquest about 300 Sessions of parliament, whereof divers are not printed.

of the Burgeffes
of Parliament.
About 300 Seffi
ons of Parliament fince the
Conquest.

In peruling over the Rols of Parliament we find First divers Acts of Parliament in print that are not of Record in the Roll of Parliament. Secondly, many Acts of Parliament that he in the Rols of Parliament, and never yet printed. Thirdly, divers Clauses omitted in the print which are in the Parliament Roll. Fourthly, more in the print then in the Record. Fifthly, many variances between the print and the Roll. Sirthly, Statutes repealed or disaffirmed, and yet printed, are Seventhly, whole Parliaments omitted out of the print. Cighthly, whole Parliaments repealed, or a great part.

And of every of these taking some examples; so, to handle all at large would require a whole Areatise, which (we having broken the Ice) some good man and

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Cap.1. The High Court of Parliament.

lover of his countrey (we hope) will undertake to wade thosow.

As to the first, Thele are in print, and not of Record. * 20 E. 3. the outh of the Jubges. 27 E. 3. cap.455,6,7,8. concerning the Alneger and Dafcoigne Wines. 37 E.3. cap. 7. touching filber beffell. 37 E. 3. cap. 19. of Bawks. 2 R.2. cap. 5. of Reives. Vid. 11 R.2.11, 2 R.2. cap. 3. of fained guifts. 7 R.2.cap. 15. againt maintenance. 9 R.z. cap. 3. of erro; and attaint. 11 R.z. cap. 4.5, & 6. not of Recold. 13 R.2. cap. 11. touching Clothes. 13 R.2. cap, 19, concerning Salmons. 13 R.2. cap.2. touching Pilgrims, 13 R.2. cap, 15, concerning the Kings Cas fles and Baoles. 14 R.2. ca. 7. concerning Tinne. 17 R. 2. cap. 8. of unlawfull Agemblies, 17 R.2. cap.9. concerning Salmons, 27 H.6, cap. 3, touching im-

To the firft. See the third part of the Inftitutes, De corrupte

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As to the fecond : Thefe Ads of Parliament are of Record, and not in wint. An. 11 E. 3. the creation of the D. of Coanivall, ec. by authority of Parliament. 3.8.2. nu. 39. concerning Juffices of Peace, a profitable law for them. 8, R. z. nu.31. concerning the jurisdiction of the Conftable & Marthall. 20 R.2. concerning the legitimation of the children of John of Gaunt D. of Lanc.by Kath. Swinford. 5 H.4.nu.24. a Commission of Ad of Parliament for arraying a mustering of men. 8 H. 4. nu. 12. Clergy exempted from arraying and multering of men. 11 H.4.nu. 28. against Baibery and Brocage in great Officers, Judges, ec. 11 H.4.nu.63. concerning Attornies., tc. 6 H.6. nu.27. that a Dueen of England Dowager, thall not contract her felfe or marry without the bings licenfe. o H.6. pu.25. concerning fees of Baiby Counfelloss, and other head Officers. And bery many others.

To the second. See the Princes cafe lib. \$. fo. 1.

Asto the third: In thefe Ads of Parliament divers claufes are omitted out To the third. of the print, which are in the Parliament Roll. 36 E.3. cap.3. in the Ac of Burbepois, tc. in the clause of the penalty, the Steward, Treasurer, and Controller are expected named, but omitted in the print. 2 R.2. flat. 2. cap.4. in confirmation of liberties, ec. faving the Kings regality, is omitted. 13 R.2. cap. 1. concerning presentations of the Bing, the last clause, concerning ratifications of the Bing, is omitted. 13 R.2. cap. 2. touching provitions, 14 R.2. cap.4. m.g. concerning Regrators of wools, high prices omitted in the print. 17 R.2. cap.4. of Balt, leaveth out Bertfordibire. 2 H.s. cap. 3. nu. 38. concerning enquetts. 2H.5. ca.1. nu. 30, concerning Juffices of peace. 9 H. 4. cap. 8, nu. 43, concerning probitions. 8 H.s. nu. 50. cap. 10, concerning proces during the Kings Will-outit-

ted in the print.

As to the fourth: In these there is more in the print then in the Record. To the fourth. 9 H.4. cap. 8. nu. 43. touching providions. 2 H.5. flar. 2, cap. 3. nu. 38. touching Juro19, tc.

The fifth: In thefe the print vary from the Record in some material thing. To the fifth. Generally in all the flatutes made concerning provisions, or other the usurpatis ons of the Pope, the biting and bitter words are left out in the print. As to take an example of two. Vi. 38 E. 3. in print. cap. 1,2,3,4. and in the Roll, nu.9.&c. 3 R. 2. cap. 3. in print. Rol, nu. 37. &c. the Bithops being Lord Chancellors. 9 R.2. nu. 1, the print mistake the beginning of the Parliament, viz. Monday after S. Luke, for Friday. 9 H.4. cap. 2. nu. 26. concerning Attornies. et. A Roll of Parliament intituled 14 E. 4. where it should be 13 E. 4.9 H. 5. cap 2 & 3.

nert Parliament.

The firth: Statutes pretended to be enacted, and after difaffirmed, and get To the firth. plinted. 5 R.2, cap. 5. flar.2, touching inquiries of Herefies. Anno 6 R.2. nu. 52. dilaffirmed by the Commons, for that they protested it was never their meaning to be justified, and to binde themselves and their successors to the Pzelats no more then their ancestors had done before them. Robert Braibroke Bishop of London was then Lord Chancellor. By this and that which followes, it appeareth how necessary it was in those dayes to have some of the Commons to be (as hath been faid) at the ingroffing of the Parliament Rols, as appeareth Roc. Parl. Anno 6 H. 4. nu. 56, 7 H.4. nu. 65. &c. & Modo tenend' Parl, cap, 8, 2 H. 4.

printed as perpetuall in some Books, where they were to endure but untill the

Rot. Parl. 11 H.4 nu. 12. vide 7 H.4. nu.11.

To the feventh.

To the eighth.

aWhere the printed book suppose that there was another Parliament in Anno 15 E.3. Whereby the former flatute was repealed, the truth is, the Parliament was holden at Weltm. 15 Palc. Anno 17 E.3. b Histories sometime explaine Records of Parliament. c Ror. Parl. 10 H.6.nu.14.

This appeareth in the fame Parliament nu 15.

Parliaments in Scotland. In Ireland.

cap. 15. difatowed by the Commons , and yet the pretended Ad printed. 2 H.s. cap.6. against Breathers, difavoured the nert Parliament by the Commons, in that they never affented, and pet the supposed Ad printed.

The feventh : Whole Parliaments omitted out of the paint, wherein thereis many notable things to be observed. An. 3 E.2. a parliament holden at Welm. 3 Sept. Dorf. Clauf. 2 E. 2. m. 14. & 22. Annis 4 E. 2. apud London, 5 E. 2. apud Westm. 6 E,2. ib, bis. 7 E,2,ib.8 E,2.apud Eborum. 1 I E,2.apud Westm. 16 E,1 apud Rippon, & postea apud Eborum. An. 6 E.3. a Parliament holden at act. minfter the monday after the feaft of S. Gregory. Anno & E. 3. a Parliament holden at Book the day before the featt of S. Peter in Cathedra. Anno 11 E. at Weftm. whereat the Poince was created Duke of Coanwall, tc. Ar. 13 E.3 holden at Weltm. in 15 Mich. 22 E. 3. at Weltm. the Monday nert after the week in the middelt of Lent. 29 E. 3. a Parliament holden at Weltim. the day af ter S. Martin. 40 E. 3. at Weltm. the Monday after the invention of the Croff. 7 R. 2. at Weltm. the Friday after the Featt of S. Mark, &c.

The eighth: whole Parliaments repealed and made boid by subsequent war, liaments, 1 H.4.cap. 3. repealed. 21 R.2. which had repealed the Parliament of 11 R.2. and reviveth the same. 15 y 39 H.6, cap. 1. a Parliament holden at Co. bentry Anno 38 H. 6, is wholly repealed. Rot. Par. 12 E. 4. nu. A whole Bar. liament holden Anno 49 H. 6. & readeptionis regni fui primo, is repealed and reversed. " Vide the Parliament of 1 , E.3. repealed. Rot. Parl. anno 17 E.3. m. 22. For there it is agreed that the flatute of 15 E. 3. Chall be utterly repealed and lose the name of a fratute, as contrarie to the laws and prerogative : and for that fome Articles there made are reasonable, it is agreed, that such Articles and others agreed in this Parliament thall be made into a statute by the advice of the

Justices.

b Dany Records of Parliament can hardly be underfood, unlesse you joine thereunto the Hiltory of that time. For example : c The Lardinal of Winds fer, Uncle of the King, declareth in open Parliament, that he being in flanden. in his journey to Rome , returned back of his own will to purge himselfeet a bruit, that he Mould be a Traytor to the Realm, whereof (no accusation beings gainst him) he was easily purged by the Duke of Bloc. Protector, by the kings commandement. But adde the History thereunto, that the Cardinall having certain of the Bings Jewels in gage, meant to have them brought after him : but thefe Icwels being arrefted and fay'd at Sandwich by the Lings commande ment, and the bruit hereof comming to the Cardinals eare (he being therewith erceedinaly troubled) for the recovery of them, returned in post to the parlia ment. Pow after he was purged of the bouit of supposed treason; touching the faid Jewels staved at Sandwich to the great hindrance of the Cardinall, ask complained. It was on a motion on his behalfe, ordered that the Cardinal should pay to the King Sir thousand pound more for them, and lend to the King thirteen thousand pound, which was done.

And for a conclusion hereof, and of this Chapter of the Digh Court of Parliament, it is to be remembred, that by the flatute of 42 E. 3. cap. 1, all statutes

are repealed that are against Magna Carta, 02 Carta de Foresta.

See hereafter cap. 75. how and in What manner Parliaments be holden in Scotland. And cap. 77. holv and what manner Barliaments be holden in Ire land, and how Bils thall patte there, never before this time published, as we know.

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CAP. II.

Of the Councell Board, or Table.

This is a most noble, honourable, and reverend Assembly of the King and his Privy Councell in the Kings Court or Palace: "This this Councell the King himself both sit at his pleasure. These Counsellors, like good Tentinels and Watchmen, consult of and so, the by publique good, and the honour, defence, safety, and profit of the Realm. A consulendo, secundum excellentiam, it is called the Councell Table. Private causes, less they should hinder the publique, they leave to the Instices of the Kings Courts of Instice, and meddle not with them: they are called Concilium regis privatum, evocilium secretum, & continuum concilium regis. The number of them is at the Kings will, but of ancient time there were timelve, or thereabouts. Of the diversity of the Kings severall Councels, you may read in the First part of the Instituces, Sect. 164.

pet Rot. Pat. 42 E.3.parte 1. m. 13. de concilio regis.

a Rot. Clauf.
12 E-3.parte 2.
11. 19. 39 E-3.
fo. 14. Rot. Pate.
11. 18. 2. parte
12. 18. 2. parte
18. 18. 2. parte

Rot. Par. 1 R. 2. nu. 87. 112. Rot. Par. 7 H. 4. nu. 41. 11 H. 4. nu. 14. 23.47. d Rot. Par. 50 E. 3. nu. 10. 12. 1 R. 2. nu. 4. Rot. Par. 1. parte, m. 10. Rot. Parl. 7 H. 4. 31. 41. 66, 67. 1. part of the Institutes, Sect. 164. Rot. Claus. 16 E. 2. m. 5. in Dors. Hen. De bello mente baro de magno & de secreto concilio regis jurat.

Ring E.3, would have his Councellors to have four properties. 1. That he be parcus sui, knowing that he would never be provident sor him; that would not be a good husband sor himself. 2. That he thould not be capidus rei alienz, no covetous, nor greedy man, sor ei nibil turpe, cui nibil sais. 3. That he should be avarus reipublica, covetous sor the Kings treasure and Commonwealth: and 4. That he super omnia sit experius; in what place the King Hall employ him, that he be expert; sor great offices are never well managed by Deputy, where the Officer himself is but a Cipher.

To these Counselloss all one honour and reverence is to be given, so, they are incorporated to the King himself, and bear part of his cares, they are his true Treasurers, and the profitable Instruments of the State. Such honour was given to Counselloss of State in ancient time, that if one did strike in a Senators of Counselloss house, or elsewhere in his presence, he was fined.

Det Ver. Mag. Carri fo. 51. 2. parte. Hugh Spencer the father, Lord Spencer Carl of Winchester, and the Bings Chamberlain, and Hugh his son Carl of Oloc'were adjudged in Parliament to be exiled, ac. amongst other Articles, fir were. First, for that they by their evill covin would not suffer the Grandees of the Realm, nor the kings good. Counsellors to speak with or come neer the Bing, 02 to give him good Touncell, 02 that the King might speak with them, but only in the presence or hearing of the said Hugh the father, and Hugh the son, or of one of them, at their wil, according to such things as pleased them. Secondly, to, giving evill counsell to the Hing, not to answer the petitions of the great men and others, but at their pleasure. Ahirdly, that they, to attain by their malice and covetousnesse to the disheritance of the great men of the Realm, and destruction of the people, put out good and covenable Dinisters, which had their places by allent, and put in others falle and chill of their covin, that they should not cause right to be done. And Sherifs, Escheators, Constables of Castles, and others in the offices of the the King, not covenable for the King, nor for the people they did make, and caused Justices to be made not Conusants in the laws of the land, to hear and determine things touching the great men and people of the Realm. 1c. And so, that which ought to be so; the maintenance of the

Stanf. 72. F.
Senatores first
partes corporis
regis.
Rot. Par. 3 H 6.
nr. 2.
e Inas ca. 46.
f Alvredus c. 15.
Hugh Spencer
the father, and
Hugh the fon
cytll Counfellors.

P 2 I H

Magna Carta.

peace, and of good men, and punishment of evill, was turned to the differitance of the great men, and destruction of the people. Fourthly, that they fallely and maliciously did counsell the Bing to rate horse and arms ac. in destruction of the good people, against the form of Magna Carra, and so by their evill counsell would have moved war within the Realm, to the destruction of Holy Church, and of the people, for their proper quarrell. Fifthly, for defeating by their ebill Counsell that which the King had granted in his Parliament by his good Com fell, by the affent of the Peers of the Land, to the diffeonour of the Bing, and against right and reason. Sirthly, they would not suffer the king to take reason. fonable fines, ac. upon alienations, ac. Read the whole.

Hereby it appeareth that one or two ought not to be fole Counfellors, and to

make a Monopoly thereof: for true it is that Homer faith,

Homer. See the Articles against Cardinal Woolsey, hereafter cap. Chancery, pa. Art.9,10.15.

* Utilis sed non folus. a Ro.Par.11 H.4. nu.14. Nota. Vid. Vet. Mag. Cart. parte 1 . fo.165. juramen-tum consiliariori. Vide Fleta lib.1. ca.17. Nota, vide inf. 5.

Haud quaquam poteris tu fortiter omnia folus, Namque aliis divi bello pollere dederunt, Huic faltandi artem, voce huic, citharaque canendi, Infernitque fagax alii fub pectore magnus Inpiter ingenium, at multis est * utilis ille.

- The duty of a Privy Counsellor appeareth by his oath, which consistes on these Articles of parts,

1. That he thall as far forth as cunning and discretion suffereth, truly, inthe and evenly counfell and advice the king in all matters to be commoned, treated, and demeaned in the Kings Councell, or by him as the Kings Counsellor.

2. Generally in all things that may be to the kings benour and behoof, and in the good of his Realms, Lozdhips and Subjects, without partiality, or erception on of persons, not leaving, or eschewing so to boe for affection, love, meed, boutt. or dread of any person or persons.

3. That he thall keep fecret the Kings Counfelt, and all that thall be commo ned by way of counsell in the same, without that he thall common it, publich it, or discover it by word, writing, or in any otherwise to any person out of the fame Councell, og to any of the same Councell, if it touch him, og if he be party thereof.

Rot. Par. 11 H.4. nu.28.

4. That he thall not for gift, meed, nor good, he promife of good by him, no by mean of any other person receive or admit for any promotion, favouring, no to, declaring, letting, or hindring of any matter or thing to be treated or done in the faid & ouncell.

Nota, supra.z.

- 5. That he shall with all his might and power help and strengthen the Itings said Councell in all that shall be thought to the same Councell so; the univerfall good of the Bing and his land, and for the peace, rest, and tranquillity of the same.
- 6. That he thall withstand any perfon or perfons of what condition estate of begree they be of, that would by way of feat, attempt, oz intend the contrary.

7. And generally that he thall observe, keep and doe all that a good and true

Counselloz ought for to doe unto his Soberaign Lord.

15p force of this oath and the custome of the Realm he is a Water Counsellot without any Batent or grant during the life of the Bing that maketh choice of

Rot. Par. 9 H.6. nu.25.

It is enacted that all the Bings Counselloss and other head officers there named thall have yearly out of the Erchequer fuch fees by way of reward as are there expressed.

Every Privy Counsellor hath a voice and place in the Court of Star-cham-

ber, as in the Chapter of the Court of Star-chamber appeareth.

For the better performance of which oath, king H.8. would with that his Counsellors would commit Simulation, Distinulation & Partiality to the Porters lodge when they came to fit in Councell.

nd

Of the President of the Councell.

There is, and of ancient time hath been a Pelident of the Councell, who inas fometime called Principalis confiliarius, and fometime Capitalis confiliarius, Rot Par. 9 E.2. Comes Lancast'. 50 E.3. 1 R.2.1. pars. Par.nu.22. 1 H.6.nu.26, 27. Dux Bedf. Rot. Pat. 1 H. 6. parte 3. Dux Gloc' Rot. Parl. 10 H. 6. nu. 9. Dux Gloc', See Rot, Parl. 11 H. 6. nu. 19. Rot. Parl. 22 H. 6. Dux Eborum. Rot. Pat. 13 E.4. part 1. Johannes Russel Episcopus Rossen' & postea Lincoln' Prafidens confilii. Int' Record Curia stellat' Johannes Fisher Episcopus Rost' Prafidens confilii 12 H.7. A 25 H.8. ulq; 37 H. 8. Carolus Brandon Dux Suff' in libro pacis, Rot. Parl. 1 E. 6. Pawler. In the Journall book of Parliament. 5 E.6. & 7 E.6. Dux Northumb. 1 & 2 Ph. & Mar. comes Arundel, &c.

Ace of Parliament naming the Prelidents of the Councell, 21 H.8. cap. 20.

31 H.S.ca.10. 34 H.S.ca.1.

This office was never granted but by Letters Patents under the great beal durante beneplacito, and is very ancient : for John Biffop of Pozwith was President of the Councell in In Anno 7 Regis Johannis, Holl. fo. 169. Math, Paris 205, & Math. Weltm': Dormivit tamen hoc officium regnante magna Elizabetha.

The Lord President is said in the statute of 21 H. 8. ca. 20. to be attending mon the Kings most royall person, and the reason of his attendance is, so; that of latter times he bath used to report to the King the passages, and the state of

the bulineffe at the Councell Table. See 50 E.3. ubi fupra.

Pert to the President of the Councell, (as more fully appeareth in the Chapter of Precedency) litteth in Councell, tc. the Lord Privy Seal, who besides his oath of a Privy Counsellor taketh a particular oath of the Privy Seal, which confifteth on four parts: 1. That he, as far forth as his cunning and bilitetion fuffereth, truly, justly, and evenly execute, and exercise the office of the Beeper of the Kings Privy Seal to him by his Highnelle committed. 2. Pot leas bing or eschewing so to do sor affection-love, meed, doubt, or dread of any person or persons. 3. That he that take special regard, that the said Privy Seal in all places where he chall divert unto, may be in such substantiall wife used and safe kept, that no person without the Kings speciall commandment or his astent, or know. ledge, thall move, feal, or imprint any thing with the fame. 4. Benerally, be thall observe, fulfill, and doc all and every thing, which to the office of the Beeper of the Kings Privy Seal duly belongeth, and appertaineth.

This is an office of great frust and skill, that he put this Seal to no grant without good warrant, not with warrant, if it be against law, undue, or incon-

bonient, but that first he acquaint the King therewith.

Apon the Lord Prive Seal are attendant four Clerks of the Prive Seal: 27 H.S.ca. 11. Solv how, and in what wife, the Bings grants, writings, and leafes, thall patte the three Seals, viz. the Prior Signet, the Prior Seal, and the Oreat Seal, and the duties of the Clerks of the Privy Signet, and Privy Seal, and what fees hall be paid, and where none at all, ic, and many Articles concerning the palfing of the Kings grants, ec. you may read in the statute of 27 H. 8. a law wozthe of observation. And of this Act you may read Lib. 8. fo. 18. b. in the Painces cafe. This officer is named in the statutes of 2 R.z. ea.5. and 12 R.z. ca.11. * Clerk of the Datop Seal. In Rot. Parl. 1 H.4.nu. 28. Garden del Privy Seal: and in the Catute of 34 H.S.ca.4. Lord Privy Seal. This Seal is called by severall names. By the statute of 11 R.2. cap. 10. it is provided that Letters of the Signet, not of the Kings secret Seal shall be from henceforth sent in dammage or prejudice of the Realm, nor in disturbance of the law, Vide Mir. ca.3. . Exception al power de Judge.

In the statute of Articuli super Carras, cap. 6, 28 E. 1. if to called the Hittle Seal, and likewise in the statute of 2 E.3. cap. 8. it is so called. Regist. fo. 186, Parvum Sigillum. 50 E. 3. nu. 185. F. N. B. 180. Fleta lib. 2, cap. 12. 6. Eft int'.&c. Custos privati Sigilli, Clerks of the Signet, Clerici Signetti are named

Principalis comfiliarius. Capitalis confiliprius. You shall have what we have observed by our own reading, of others learn that which is here wanting.

21 H.8.ca. 20. Vid.Rot.Parl. 50 E.3.nu-12.

TLord Privy Seal. See Rot. Parl. 50 E.3.nu. 10.& nota bene. The oath of the Lo, Privy Seal.

27 H.8,ca.11.

* An humble name of a great Officer, and in those Acts ranked amongst the Grandees of the Kingdo ne.

Scethe 2. part of the Inflie. Artic Super Cars, F. N.B.8 7.2. See Artic.Super Cartas, ubi fupra. Lib. 8. ubi Capra.

in the faid Act of 27 H.8. &c. and are four in number attendant upon the kings principall Secretary who always hath the keeping of this Seal or Signet. for fealing of the Bings Privy Letters : thefe four Clerks fit at the Secreta ries Board. He that defireth to read more of the duty of Paiby Counselles, and how, and for what causes they are to be puntithed, if they offend; let him read the parliament Roll of the 50 year of E.3. nu. 15,16,17,18,19,20,21,22, 23,24,25,26,27,28,29,&c. 34,35,&c.

Ads of Parliament concerning the Lings Priby Councell, 25 E. 3. ca.4. flat. 4, 28 E. 3, cap. 31. 42 E. 3. cap. 3. in print. 9 R. 2. nu. 12. 11 H. 4. nu.28, 13 H. 4. cap. 7. 3 H. 7. cap 14. 3 E. 6. cap. 5. 21 Jac. ca. 3. concerning warrants of affiliance, ac. 3 Carolica. 1. in the Petition of right, concerning loans, te

imprisonment, tc. martiall law, foldiers, tc.

See hereafter pa. in the Chapter of the Chancery in the Articles against Cardinall Woolfey, Artic 9.10.15, &c. concerning Privy Counsellors.

It appeareth by the Writs and Records of Parliament, that the high Court of Parliament is resolved to be holden by the Ling per advisamentum

concilii fui, that is, by advice of his Priby Conncell.

Diders of Parliament for the Privy Councell, and other things concerning them in the Rols of Parliament, 50 E.3. nu.10. 12.15. 21. 34. 42 E.3. nu.27. Sir John Lees cafe. 1 R. 2. nu. 87. 112. Rot. Pat. 1 R. 2. parte 1. m. 16, 2 R.; ftat. 1. nu. 49. Rot. Parl. 1 H. 4. nu. 2. 7 H. 4. nu. 31, 32,38. 41. 66, 67, 68. &c, 11 H. 4. nu. 14. 13 H. 4. nu. 3. 1 H. 6. nu. 30, 31, 32. 2 H. 6. nu. 15, 16, 17. 8 H.6. pu. 27,28. certain Articles to the number of eighteen touching the order of the Kings Touncell (among A which the eleventh is, that all offices and benefices of the Kings gift, such as had served him or his father. Chould be prefer red thereunto) are established by the King, the Bishops and Lords. 9 H.6. nu. 25. 11 H. 6, nu. 19. Sir Articles, whereof the last was, that a Roll hould be made of such as at any time had served in the wars, or otherwise, to the end they thould be preferred to offices and benefits. 12 H.6. nu. 4. De intendertiis confiliariorum. 31 H. 6. nu.30, Vide Rot. Pat. 32 H 6. parte 1. m.22,

Acts of Councell concerning the same. Ror, finium. 20 E. 3. m.8, Ror, Claus. 4 H. 4. in Dorf, m. 13. Clauf, 25 E. 3. m. 10. Pat. 19 R. 2. parte 2. m. 8 Clauf. 20 E. 3. parte 1. m. 26. The Clerks of the Councell are attendants upon the Loids and others of the Privy Councell. Concerning the Clerks of the Councell and their duty, fee Rot, Parl. Anno 1 H. 6, nu. 32. 2 H. 6. nu. 17.8c.

Df these Ads of Parliament, orders in Parliament, and Ads of Council we have referred you (for avoiding of tediousnesse) to the originals. Qui ambu.

lat fraudulenter revelat arcana, qui autem fidelis est celat,&c.

Bonum est abscondere sacramentum regis, opera autem dei revelare honorificum.

Nihil magis optandum, quam ut rerum gerendarum confilia, quoad ejus fieri poterit, quam maxime occulta fint.

Eximia est virtus prastare silentia rebus, Ac contra gravior culpa tacenda logui.

Nulla sunt meliora consilia, quam quæ ignoraverit adversarius antequam sacias,&c. Quid fieri debeat, tractato cum multis; quid facturus sis, cum pauciffimis ac fideliffimis,&c, Confilia nifi fint abscondita, exitum raro prospiciunt,

Confilia callida & audacia primo fronte lata, tractatu dura, eventu triftia. In confiliario imprimis requiritur temperantia quia * novandis, quam gerendis rebus aptiora ingenia illa ignea. And it is certain that men of fiery and

furious spirits easily become factions. In confiliario Principis tria maxime requiruntur, libertas, fides, & veritas: li-

bertas confilii est ejus vita & essentia, qua erepta, confilium evanescit. Privatæ res semper offecere, officientque publicis consiliis, pessimum veri affectus & judicii venenum sua cuique utilitas.

9 R.2.nu. 12.and 11 H.4.nu. 28. not in print. 3 E.6.ca. 5. repea-

Prov.11.13.

Tobie 12.7.

Valerius lib.4. Regulz.

Ovid.

Vegetius lib.3. de re militari.

Erasmus in Epist. * Curtius.

Plinic.

Tacitus.

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C,

Tucivem patremque geris, tu consule cunctis; Non tibi, nec tua te moveant, sed publica vota.

All which, and much more are comprehended within the oathabovefaid.

Some rules of Counsell, which in Councell we have observed, we will adde. First, that it is fafest to give a king counsell, when he demandeth it. Secondly, the trueft and best counsell is ever given to a king, when the question is so evenly propounded, as the Counsellor knoweth not which way the King himfelf inclineth. Thirdly, that * prapropera confilia funt raro prospera : for refolution thould never goe before deliberation, not execution before resolution. Fourthly, when upon debate and deliberation it is by the Councell Table well refolved, the a change thereof upon some pathate information is neither fate nor honourable, b not that after resolution timely execution be delayed. Fifthly, it is a mean of prosperous successe when the question is debated with a few, not that he hould rely upon them, but that thereby the state of the question may be wel underfood to the end the same may be plenarily a fully propounded to the whole Moard. Sirthly, good counsel is the soul of the State. Seventhly, when Counsellogs dos eft. bide or disquise the truth, it is full of danger both to the King and to 4 themselves. Eighthly, violent courses are like to hot waters that may do good in an extremity, but the use of them doth spoil the formach, and it will require them fronger and fronger, and by little and little they will leffen their own operation. Laftly, fuch fear as both not fal in constantem virum, is an enemy to good counsel: for what is fear, but a betraying of fuch fuccours, as reason (and counsell) thould afford?

Ro Lord of Parliament takes any place of precedency in respect he is a Prison Enury Counsellor. But under that degree such place a Privy Counsellor that Latimers case, as is set down in serie ordinum tempore H. 7, hereafter remembred in the Sap. 12.

Chapter of Precedency.

* Book of Judg. 19. ver. ulcimo. Confider, confult, and then give sentence. a Seneca. Non femper in uno gradu ,fed in una via, non semitat, fed aptat. b Saluft.priufquam incipias, confulto, & ubi consulueris mature facto opus c 11 H.4 nu.14. d Malum confilium confulcori peffimum. Rot. Clauf, 18 H.3.nu.19. Segraves cale. Rot.Par.50 E.3. nu.24. Segnior

CAP. III.

Of the Power and Authority of the Protector and Defender of the Realm and Church of England during the Kings tender age.

Strong Parl. anno 1 H. 6. nu. 26. & 27. 2 H. 6. nu. 16. 6 H. 6. nu. 27. 23. 24. 8 H. 6. nu. 13. 11 H. 6. nu. 19. 32 H. 6. nu. 71. where you shall finde his authority, place, and precedency well expressed and described.

The furest way is to have him made by authority of the Great Councell in Parliament.

See Hollingsheds Chronicle, pa. 1069, which may give you occasion to learth to the Records of such Protectors as are there rehearled,

CAP. IV.

The Court of the High Steward of England, intituled, Placita Corona coram Thom. Duce N.

Seneschallo Anglia.

The antiquity
of his Office.
Nota, then a
Judge of the Peers
of the Realm.
1 H. 4. 1.
24 H. 8. 13.
Cust. de Norm.
cap. 10.

Has stile is Seneschallus Anglia. This office is very ancient, and was before the Conquest. For I reade in an ancient and authenticall manniferty, intituled Authoritas Seneschalli Anglia: where putting an example of his authority, saith: Sieut accidit Godwino comici Kancia tempore regis Edwardi antecessoris Willielmi Ducis Normandia pro hujusmodi male gestis & consiliis suis (per Seneschallum Anglia) adjudicatus & forissecit Comicivam suam.

In the time of the Conquerour William Firz-Eustace was Steward of England. And in the reign of William Rusus and H. 1. Hugh Grantsemenel Baron of Hinkley held that Farony by the said Office.

Of ancient time this Office was of inheritance, and appertained to the Carldome of Leicester, as it also appeareth by the said Record: Seneschalcia Anglia. pertinet ad Comitiva de Leicester, & pertinuit ab antiquo. That is, that the Carl dome of Leicecter was holden by doing of the office of Steward of England. Other Records testifie that it should belong to the Karony of Hinkley. The truth is, that Hinkley was parcell of the possessions of the Carle of Leicester, for Robert Bellomont Carl of Leicetter in the reign of H. 2. maried with petronil daughter and heir of the lato Hugh Grantsemenel Baron of Hinkley, and Lord Steward of England, and in her right was Steward of England. And lo it continued, untill by the forfeiture of Simon Mountfort it came to King H. 3. who in the 50 year of his reign, created Edmond his second son Earl of Leice: fter, Baron of Hinkley, and High Steward of England, which continued in his Line untill Henry of Bullinbroke * fon and heir of John of Gaunt Duke of Lancafter and Carl of Leiceffer, who was the last that had any estate of inheris tance in the office of the Steward of England. Since which time it was never granted to any Subject, but only hac vice. And the reason was, for that the

*Rot.Par.21 R.2 nu. 4. Int. placita coronæ Iobn of Gaunt Duke of Lanc. and Earl of Leicefter, Sceward of England. power of the Steinard of England was so transcendent, that it was not holden the such of the fait Record saith, b Er sciendum est quod for he is not to tum regnum Anglia, & omnes ministros legum infra idem regnum temporibus spacis & guerrarum, &c. and proceedeth particularly with divers erceeding Digh powers and Authorities, which may well be omitted, because they serve so mentioned in the placeing of great Officers.

prefent ufe.

and albeit their power and authority have been fince the reign of H. 4. but hac vice, get is that hac vice limited and appointed. As when a Lord of Barliament is a indiced of treason or felony, then the grant of this Office under the Great Seal is to a Lord of Parliament, reciting the Indiament, . Nos confiderantes quod justitia est virtus excellens & Altissimo complacens, eaq; præ omnihus uti volentes, ac pro eo quod officium Seneschalli Angliz, cujus przsentia pro administratione justitia & executione ejustem in hac parte facien' requiritur, ut accepimus,jam vacat: De fidelitate, strenuitate,provida circumspectione, & indufiria veltris plurimum confidentes ordinavimus & constituimus vos ex hac causa & causis Seneschallum nostrum Anglia ad officium illud cum omnibus eidem officio in hac parte debitis & pertinentibus hac vice gerend', accipiend', & exercend', f dantes & concedentes vobis tenore præsentiú plenam & sufficientem potestatem & authoritatem, ac mandatum speciale indictamentum prædict. &c. so as it appeareth, that this great Officer is wholly reftrained to proceed only mon the recited indiament. And he to whom this Office is granted, muft be a Lord of Parliament and his proceeding is to be & fecundum leges & confuerudines Applia, for fo is his Committion. And hereof you may reade more at large in the third part of the Inflitutes, cap. High Treason. h Allo at every Coronation he hath a Commission under the Great Seale has vice, to hear and betermine the claimes for grand Serjeanties and other honourable fervices to be done at the Coronation for the folemnization thereof: for which purpose the High Stells ard both hold his Court forme convenient time before the Coronation. See a presignit hereof before the coronation of King R. 2. John Duke of Lancaster then Steward of England, (who in clapmes befoze him was filed Treshonorable Seignior le Roy de Castle & Leon, & Seneschal D'angliterre) and held his Court in Alba Aula apud Westm. die Jovis proxime ante coronationem. Quæ quidem coronatio habita & folemnizata fuit die Jovis sequente, viz. 16 Julii Anno 1 R. 2.

The first that was created hac vice for the folemnization of the coronation of H.4. was Thomas his second son. And upon the arraignment of John Holland Carle of Huntingdon, the first that was created Steward of England hac vice,

was Edward Carl of Devon.

Rot. Parl. 37 H.6. no.49. Thomas Courtney Carl of Devon was arraigned of High Areason before Humphrey Duke of Gloc. hac vice Steward of England, and acquited. And so was k the Lord Dacres of the Porth arraigned of High Areason before Thomas Duke of Porth. hac vice Steward of England, and

acquited by 10 Peers.

Then he litteth by some of his Office he litteth under a Cloth of Chate, and such as direct their speech unto him, say, Please pour Grace my Lord High Steward of England. The Kile of the said John of Gaunt was, Johannes silius negis Anglia, nex Legionis & Castella, Dux Aquitania & Lancastria, Comes Perdia, Lincolnia, & Leicestria, Seneschallus Anglia. And in respect his power before it was limited was so transcendent, I finde no mention made of this great Officer in any of our ancient Authors, the Mirror, Brackon, Britton, or Fleta. It seemeth they liked not to treat of his authority. Petther do I finde him in any Act of Parliament, nor in any Book sase before i H. 4, and very sett since: which hath caused me to be the longer in another place to set sorth his authority and due proceeding apon the arraignment of a Peer of the Parliament, by sudiciall record and resolution of the Judges, agreeable with constant experience.

For the Etymologic and fignification of (Seneschallus) fee the first part of the Institutes.

vice: and thereforc he is not mentioned in the Statute of 31 H.8 ca.io.concerning the placing of great Officers. b He cwih agreeth the cuftom, of Norm. cap.19. fo.17. Hollensh Chron. pa.866. c His authority (bac vice) limited. d See the fecond part of the Institutes, Mag. Cart.cap.29. 1 H.4.cap.1. e He is fole Judge by the Common law, & can make no Deputy. f Stanf.pl.cor.152 1 H 4.fo.1. 13 H.8.fo.11.b. g His rule.

h His further au-

V.1 H.4 fo.1. Therefore Tho.
Walfingham p.363
and others who affirme that he was beheaded ar Pleffy in Effex by the Commons, do erre.
& Term.Pafch 26.
H 8. of Juffice Spilmans Report.

See the third part of the Institutes, cap. Treason,

Cap.5.

First part of the Inftit. Sed. 78.

Institutes: And though it hath several derivations, yet as being applied to England, it is properly derived from Sen, that is, Austice, and Schale, that is, Governour or Officer, that is, Presecus seu officiarius justicie. And this agreeth well with his authority and duty to proceed (as hath been said) secundum legel & consucudines Anglie.

It is to be observed, that as the Peers of the Realm that be Triots of Peers, are not swoone, so the Lord Steward being Judge, 4c. is not swoon: yet ought be according to his Letters Patents to proceed secundum legem & consucration.

nem Anglia.

CAP. V.

The Honourable Court of Star-Chamber, Coram Rege & Concilio suo: Of ancient time, Coram Rege in Camera, &c.

That it is an eminent Court proved by Records, and Acts of Parliament.
a 22 Lib.aff.pl.52 b Rot.pat.1 part.
m. 13.
Frand and falsehood.
c Rot.pat.1 part.
m. 13.
Falshood in an Officer and rasing of a Record

d Rot. clauf.
42 E-3. m. 8 in
dorf.
Vid. Rot. pat.
2 R-2. 1 part.m.
Camera Stellata,
for rafing.
12 R.2. cap.11.
dev. le councel.
e Rot. clauf.
41 E-3. Cambd.
Brit. 130.
f Rot. clauf.
16 R. 2. in dorf.
m. 11.

g Par. 6 H. 5. & confimile Anno 7 H 5 pro manerio de Fitherwicke in Com' Norff. b Rot. clauf. 17 H. 6. I A a the 28 year of the reign of E. 3. it appeareth that the retoins Cora nobis, are in three manners. Coram nobis in Camera (which, it is said, was afterwards called Camera Sellaca.) 2. Coram nobis ubicunque surimus in Anglia, which is the Kings Bench; and Coram nobis in Cancellaria. And of all the High and Honourable Courts of justice, this ought to be kept within his proper bounds and jurisdiction.

b In 38 E. 3. coram Rege & Concilio, John Redland complained of Roben Spinke for delibery of prisoners upon false suggestion made to the king: upon hearing the cause, the desendant was acquitted, the plaintife imprisoned.

o In 39 E.3. Ralph Brantingham one of the Chamberlains of the Excheque complained before the King and his Councell of Richard Cefterfeild Clerk Deputy of the Kings Treasurer, in the receipt, for divers allowances, payments, to unduly made, and for rasing of Records, to. Upon the hearing of the cause by the whole Councell, the defendant was acquitted, and the plaintife removed from his office, and committed to prison.

d The Abbot de Bruera, and Ragge his Monk sentenced coram Rege & Concilio, for rating of Letters Patents, and inserting other words: another

Letters Patents by fentence cancelled.

* In Anno 41 E.3. in a Bill of complaint exhibited to the Bing by Elizabeth the widow of Nicholas Awdeley plaintife, against Jane Awdeley defendant, who appeared before the Bings Councell, viz. the Thancellour, Treasurer, Intices, and others assembled En la Chamber des Estoiels pres de la Receits.

of A suit depending before the King and Councell between the Abbot of Saint Austen of Canterbury and others concerning Arecks, sc. The Abbot brought his action at the Common law against the parties, who being thereupon arrested and imprisoned, the Sheriste was commanded by the Kings Arit to deliber them, and to sorbear to serve any other Process against them: and the reason there yested is notable, Quia non est juri consonum, aut honestum, quod aliquid de hiis que coram nobis & concilio nostro in discussione pendent, alibi inde interim placitari debeat, aut apparere.

g A fuit depending before the King and his Councell, between W. G. of the one part, and H. S. of the other part: a Sequestration is ordered for the prefer

vation of the things in question,

h In 17 H.6 an incolment of a confession of John Ford of Lon. Percer before the Lozd Treasurer and others of the Kings Councell in the Star Chamber for

the fraudulent packing and transporting of Wooll, with a Writ to the Sheriffe of London to fet him on the Willozp.

The Abbot of Weltminfter erhibited his Bill to the Bing againft the Sheriffes of London for arresting and drawing out with force a priviledged perfon out of the Sanduary of S. Marcins le grand belonging to the faid Abbey : which matter after due proceedings being heard in the Court of Star-chamber before the Loads and others of the Bings Councell, and Hodey and Newton Chief In: fices, which Justices betermining, that by law the party ought to enjoy the miviledge of Sanduary, the Sheriffes were grievoully fined in the Star-chamber by particular name : which fentence the Lord Dier, as he hath reported under his own hand, falu upon a reference to him and Justice Southcote out of the Star chamber, Trin. 1 1 Regina Eliz. concerning the Sanduary of Weffm. foz Hampton and Whitacres being in fog bebt. And the Lord Dier made this Rote with his own hand. Nota, por le Star-chamber. And this is a notable proof of the Jurisdiction of the Court for fining, tc. That the Bill was erhibited to the Bing, and that the two Chief Bullices then did fit, and were Judges (amonall others) in that Court.

For divers Riots, Ortortions, oppreffions, and grievous offences by divers persons done against the Kings peace and lawes, to divers of his liege people, commandement hath been given by the Kings Writs under the Great Seale (which continue untill this day) to appear before the King in the Chancery, or before him and his Councell at certain dayes to answer to the premises, which commandement hath been many times disobeyed. Provision is made by that Act for the punishment of such disobedience, as by that Act appeareth. True it is, that this Act was but tempozary, pet it affirmeth fo much as before bath been

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Anno 35 H. 6. A Wirit of Certiorari was directed: Thoma Kent Clerico Coneilii: Volentes certis de causis certiorari super tenorem eujusdam Actus Pasch. viá regis.35 H.6 ukime præterito apud Westm. in camera stellata concernen' Johannem Ducem North. And fee there proces of rebellion against the fato Duke.

Robert Davers a Counsellor at law by bill erhibited to the Bing, tc. for Defa. Rot.clauf. 11 H.6 mation of rating a Record. And the faid Robert by the bings Councell in Camen fellara was acquited, and John Broker that made the rafure fentenced.

The Kings Councell affembled in the Star chamber. The Lord Cromwels Rot. clauf. 18 H. 6

An order in the Star-chamber for the Duke of Borks Councell to have accesse Ror. par. 32 H.6. to him, because called into the Chamber by Privy Seale, ac.

An exemplification of a complaint by Richard Heron against John Prout, Coram rege & confiliariis fuis in Camera fellara, for a great misdemeanour concerning Tools.

Anno 8 E.4. proceeding by english bill, answer, replication, tc. Coram rege & Ror.petit. 8 E.4.

Anno 20 E. 4. a fentence in the Star-chamber for turbulent and undue electie Rot. par. 20 E. 4. ons between the Abbot of Bury and the inhabitants.

We have omitted many other Records, but because they be of like nature we have contented our felf with these. And now we will consult with our Book cales, and iR eports of law: wherein either coram rege & concilio, or coram Rege & concilio in camera stellata, is named.

39 E.3. fo. 14. 19 aff. pl. 1. 40 aff. 38. 13 E.4.9. in camera stellata. Vid. 27 E.3. cap. 1 3. 2 1 E.4.7 1. in camera stellata. 2 R. 3. fo. 2. & 1 1. in camera stellata. 1 H.7.3. incamera fiellara. This Court in ancient times fat but rarely, for three causes. First, for that enormious and exorbitant causes which this Court dealt withall only in those dayes rarely fell out. Secondly, this Court dealt not with such caules, as other Courts of ordinary justice might condignely punish, ne dignitas hujus curix vilescerer. Thirdly, it very rarely did fit, left it fould draw the Kings Privic Councel from matters of State, pro bono publico, to hear private causes, and the principall Judges from their ordinary Courts of Juffice.

Anno 29 H. 6. Trin. II Eliz. Dier. Manufcript not imprinted.

Stat. de 31 H.6. Vide Rot. Parl. 1 H.6.nu.41.

Ex bundello bre-

Par. 3 E.4. part. 1.

parr. 2.

Book cases and Reports of law,

That

3 H.7.ca.r.

That which now is nert to be considered in serie temporis is the trainte of 3 H.7. The Letter whereof followeth:

The President of the Kings Councell adde d.

It is ordained that the Chancelour and Treasurer of England, and the Keeper of the Kings Privy Seal, or two of them, calling to them a Bishop and a Temporal Lord of the Kings most honourable Privy Councell, and the two Chief Justices of the Kings Bench and Common Place for the time being, or other two Justices in their absence unon bill or information put to the faid Lord Chancelour or any other against any person for unlawfull maintenance, giving of liveries, figns and tokens, and reteyners by Indentures, promifes, oaths, writings or otherwise, imbraceries of his subjects, untrue demeaning of Sherifs in making of pannels, and other untrue returns, by taking of mony, by injuries, by great riots, and unlawfull affemblies, have authority to call before them by Writ or Privy Seale the faid misdoers, and they and other by their discretion, by whom the truth may be known to examine, and fuch as they find therein defective, to punish them after their demerits, after the form and effect of statutes thereof made in like manner and form as they should, and ought to be punished, if they were thereof convict after the due order of law.

Camden Brit,

camera stellata authoritatem prudenti simus princeps Henricus septimu ita Parliamentaria adauxit & constabilivit, nonnulli primum instituise

falso opinantur.

Apon this flatute and that which formerly bath been faid, thefe Sir conclus. one doe follow. The first conclusion is, that this Act of 3 H.7. Did not railes new Court; for there was a Court of Star-chamter, and all the Kings Prim Councel Judges of the fame. For if the faid Ad Did eftablith a new Court, then thould those four or any two of them be only Judges, and the rest that they should call to them should be but assistants, and aidants, and no Judges : for the fatute of 31 E. 3. cap. 12. which raifeth a new Court, and before new Judges, is introductory of a new law, by having conulance of error in the Erchequer, which thall be reverted in the Erchequer Chamber befoze the Chancelour and Treasurer, or calling to them two Judges, there the Thancelour and Treas furer are only Judges in the wait of Erroz, and so in the like. But it is clear that the two Justices in the Star-chamber are Judges, and have voices, as it hath been often resolved, and daily experience teacheth. And further to clear this point, if the Justices ihould be but assistants and no Judges in the Stars chamber, for that they are to be called, ic. then, and for the same reason thould neis ther Lord Spiritual nor Temporall, nor other of the Privy Councell be Judge es, not have voices in the Court of Star-chamber. And therefore the fudden opinion in 8 H.7. and of others not observing the faid diffination between Aas Declaratory of proceedings in an ancient Court, and Ads Introductory of a new law in raising of a new Court, is both contrary to law, and continuall erpes

\$ H.7.13.Plow. Com.393.

The second conclusion is, that the Act of ; H. 7. being in the affirmative is not in some things pursued. For where that Act directely that the bill or information should be put to the Lord Chancelour, ic. all bils and informations in that Courtare constantly and continually directed to the Kings Pajesty, as they were before the said Act, and it is a good rule, that where the Act of 3 H.7. is not pursued, there (if there be many judiciall presidents in another sort) they must have warrant from the ancient Court, and pet it is good (as much as may be) to pursue this Act, there being no greater assurance of jurisdiction then an Act of Parliament. And where there be no such presidents, then the statute as to the Ludges must be pursued: and that was the reason that

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befault of others, Sir Christopher Wray Chief Justice of England of a time was made Lord Privy Seal to sit in the Star-chamber, Ne curia deficeret in justice exhibenda.

Thirdly, that this Act being (as hath been said) in the affirmative, and enumerating offers particular offences, albeit (injuries) is a large wood, yet that Court hath jurisdiction of many other, as is manifest by authority, and daily experience, and this must of necessity be in respect of the former jurisdiction.

Fourthly, this Act in one point is introductory of a new law, which the former Court had not, viz. to examine the Defendant, which being understood after his answer made, to be upon oath upon interrogatories, which this ancient Court proceeding in criminal causes had not, nor could have but by Act of Parliament, or prescription, the want whereof especially in matters of trands and descrits (being like birds closely hatched in hollow trees) was a mean that truth could not be found out, but before the statute the answer was upon oath.

Fifthly, where it is said in this Ad, And to punish them after their demerits after the form and effect of statutes made, &c. The Plaintif may choose whether he will inform upon such statutes as this Ad directeth, or for the offence at the dommon law, as he might have done before this Ad, which proveth that this Ad taketh not away the former jurisdiction.

6. Laftly, that the jurisdiction of this Court dealeth not with any offence, that is not malum in fe, against the Common law, or malum prohibitum, against some Statute.

It is to be observed that neither the statutes of 37 E.3. ca. 18. 38 E. 3. cap, 9. 41 E.3. ca.3. 17 R.2. ca.6. not any other statute taketh away the jurisdiction of any settled Court of Justice, neither is the Court of Star. chamber named in any of them, and yet was it a Court then and before that time.

Divers speciall Acts of Parliament have given also jurisdiction to this Court, viz. 12 R. 2. ca. 11. 2 R. 2. cap. 5. 13 H. 4. cap. 7. 33 H. 8. cap. 1. 4 & 5 Ph. & M. cap. 8. 5 Eliz. ca. 9. 10. & cap. 14. 27 Eliz. cap. 4.

And feeing the proceeding according to the laws a customes of this Realm cannot by one rule of law suffice to punish in every case the exorbitancy and ementity of some great horrible crimes and offences, and especially of great mentitis Court dealeth with them, to the end that the medicine may be according to the disease, and the punishment according to the offence, we premate adomnes perveniar, without respect of persons, be they publique or private, great or small:

As 60 oppression, and other exorbitant offences of great men, (whom inseriour Judges and Jurors (though they thould not) would in respect of their greatnesse be assaid to offend) bribery, extortion, maintenance, champerty, imbracery, forgery, perjury, dispersers of salse and dangerous rumours, news, and scandalous libelling, salse and partiall misdemeanours of Sherifs and Failiss of liberties, trands, deceits, great and horrible riots, routs, and unlawfull assemblies, single combats, challenges, duels, and other hainous and extraordinary offences and misdemeanours; but ordinary, and such offences as may be sufficiently and condignly punished by the proceeding of the Common laws, this Court leaveth to the ordinary Courts of Justice and dealeth not with them, ne dignicas hujus curix vilescere, as before is said.

The proceeding in this Court is by bill or information, by examination of the Defendant upon Interrogatories, and by examination of witnesses, and tarely one cours, upon the confession of the party in writing under his hand, which he again must freely confesse in open Court, upon which confession in open Court, the Court doth proceed. But it his confession be set down too thort, or otherwise then he meant, he may deny it, and then they cannot proceed against him but by bill or information, which is the fairest way.

The Informations, bils, answers, replications, ac. and Interrogatories are in of Brueries case. English, and ingrossed in parchment, and filed up. All the Warits and Processed &c. In volonia or of the Court are under the Great Seal: The sentences, decrees and Acts of do of ordinem ju-

¶ The Inrudi= Etion of this Court.

Camden Brit.

130. In Camera
Siculata trasfantur
criminalia, per juria, impostur a, dolus malus, excefsus, &c.

pand, ore tenus, see before Ro-Claus, 1 too Fords cale. Res. Claus.

Te in of Brueries cale, at E.3. the Abbot of Brueries cale, at E.5. t

this Court are ingrossed in a fair book with the names of the Lords and or there of the Kings Councell and Justices that were present and gave their voices.

In an information in this Court by the Atturny Generall against his

Pafc. 12 Ja.Reg.

Stephen Procter, Birkenhead and others for conspiracy against, and scandali of the Cart of Posthampton, and Edward Lord Wootton two of his spate ties Dity Councell: At the hearing of which cause there sat eight in Court. and four of them condemned the Defendant : and the Lord Chancelour, the two Bithops, and the Chancelour of the Erchequer acquited him. And the que Kion was, whether the Defendant thould be condemned or no: and berein it was moved by the Kings learned Councell, that when the voices be equall, that in that case, of which part the Lord Chancelour was, on that side it should be decreed, without regard, whether it was for the Plaintif or Defendant : And # was resolved, that regularly & de communi jure, in respect of the equality of the poices no fentence could be given in that case, as it holdeth in the Bigh Court of Parliament, and all other Courts, according to the old rule, Paribu fententis reus absolvitur. And therefore the Pacifibents of this Court men to be fearched; for except prefidents could make a difference between this Court and others, the Defendant could not be fentenced. Whereupon the Court referred this question to the two Chief Bustices, that they calling unto them the Bings learned Councell to view presidents, whether by the custome of this Court the common rule in other Courts is altered. Befoze from in the me fence of the Kings learned Councell two presidents were produced for proof of the faid custome, viz. one Termino Hil. Anno 39 Eliz. between Gibson Plaintif, and Griffich and others Defendants: wherein the complaint was for a Riot. And upon hearing of the cause eight sat in Court, and four gate their fentence that the Defendants were guilty, and the other four, whereof the Lord Chancelour was one, Did acquit the Defendants, and no fentence of condemnation was ever entred. But the Justices took it, that that president tended not to prove any fuch custome, for it agreed with the rule in other Comis. Another president was thewed, Termino Hil. 45 Eliz. in an Information by the Ducens Atturny Benerall against Bathern and others for forging of a Will ac. Alpon the hearing of the cause, the presence consisting on eight, whereoftom gave fentence against the Defendant for forgery, and to be punished according to the statute of 5 Eliz. the other four, whereof the Lord Chancelour was one, found him guilty of a misdemeanour, and not of the forgery, and imposed a fine of five hundred pound only, and impalforment, and that was entred according to the Lord Chancelours voice. But no rule of Court was thewed for entring thereof in that manner: fo as it appeared not that it was ever moved, or debated in Court, and in that case all concluded against the Defendant, and it is but one president. Pow whether this one, teing such a one as it is, and so late, be fufficient to alter the generall law and course of all other Courts, I leave to the judgment of this honourable Court: And sentence was never given against Sir Stephen Procter agreeable to the generall rule in other Courts. See Ros Parl, 8 H.6, nu. 28,

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Mic. 36 & 37 El.

Lawrence Hide and Henry Hide Esquires, exhibited a bill of complaint a gainst George Corier and others upon the statute of 32 H.8. cap.9. for unlawfull maintenance; and complained for three severall Leases for certain years of the Parsonage of Dynton in the County of Witt. Subsect the Leson not any of his Ancestors were in possession within a year before, a. and pursued the statute: Apon which part of the Bill (for the Bill concerned riots and ether things) the Desendant demurred in latin, and the causes of the demurrer were. First, that by the said Act this Court had no jurisdiction of this cause upon this statute, because that the Act which is introductory of a new latin did not give jurisdiction to this Court, but the suit must be in the Courts of the Common law upon this Act, which (said they) also appeared, in that in the remedy given by the Act is this clause. In which action, bill, plaint, or informa-

Erodiu, fo, 112.

Hil.45 Fl. in Camera stellata,

Batherns cafe.

Hil 39 Eliz. in

Camera stellata Gibsonscase.

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7 Eliz.fo,236.

Dier 15 El. 323.

Taverners cafe.

Pasc. 27 El. in

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tion no effoign, protection, wager of law or injunction shall be allowed, and that no effoign, te. did lie in this Court. The fecond objection was, This Court had no power to give the Plaintif remedy to have erecution in this Court of the penalty given by this Ad. Whereunto upon great advicement it was an: finered and refolved. As to the first: that the statute did give jurisdiction to this Dier Mich 6 & Court, for it is one of the Kings Courts, tc. intended in the Aa: and the ftatute of 3 H.7. declareth that this Court hath jurisdiction of maintenance, and this Ad of 32 H. 8. doth adde but a greater penalty: and as to the clause of effoin, tt it must be construed reddendo fingula fingulis, &c. for as no effoin, tc. lieth in this Court, fo no injunction is awarded in the Court of Common Pleas. tc. As to the fecond: It was refolved that this Court had power in this cafe to grant execution of the penalty inflicted by this Act, as in a like case had been done, in the cafe of James Taverner. And both thefe points had formerly been refolited in this Court, 14 Maii. 27 Eliz. between Robert Bradfhaw Efquire Plaintif, and Robert Charnock Elquire Defendant, upon this statute, and the case degred accordingly, and a Commission awarded out of this Court, to engage Camera stellara. of the value, tc. And for these causes by the rule of the whole Court, the demorrer was ober-ruled, and the Defendant ordered to anfiver.

Charnocks case.

This Court litteth twice in the week in the Term time, viz. on Wednesdays, and Fridays, except either of those dayes fall out to be the first or last day of the Terme, and then the Court litteth not, but it constantly holdeth the nert day after the Terme ended: but if any cause be begun to be heard in the Terme time, and for length or difficulty cannot be fentenced within the Werm, it may be continued and fentenced after the Merm.

It is the most honourable Court, (our Parliament excepted) that to in the The dignity Chillian world, both in respect of the Judges of the Court, and of their bos of this Court, nourable proceeding according to their just jurisdiction, and the ancient and just orders of the Court. For the Indges of the same are (as you have heard) the The Indges Grandess of the Realm, the Lord Chancelor, the Lord Treasurer, the Lord of this Court. President of the Kings Tourcell, the Lord Prity Seal, all the Lords Spiris fuall, Tempozall, and others of the Kings most honourable Pritip Councell, and the principall Andges of the Realm, and fuch other Lords of Parliament as the ling thall name. And they judge upon confection, or deposition of wit. Camb, ubi supra. nedes: And the Court cannot fit for hearing of causes under the number of eight at the least. And it is truly faid, Curia Camera Rellata, fi veruflatera spectemus, eft antiquiffima, fi dignitatem, honoratiffima. This Court, the right infittetton and ancient orders thereof being observed, doth keep all England in quiet.

Albeit the file of the Court be Coram Roge & Concilio, pet the Bings Councell of that Court hear and determine causes there, and the king in sudgment of law is always in Court. As in the Kings Bench the Kile of the Court is Coram Rege, and pet his Justices who are his Councell of that Court doe hear and determine, and so Coram Rege in Cancellaria, and the like.

So this Court being holden Coram Rege & Concilio, it is of may be compount ded of a three severall Councels. That is to say, of the Lords and others of his a Seethe r. pare Pajesties Privy Councell, always Audges without appointment, as before it of the Institutes. appeareth. 2. b The Judges of either Bench and Barons of the Erchequer are of the Lings Councel for matter of law. tc. and the two Chief Juffices, or in their les at Parliament. ablence other two Justices are standing Judges of this Court. 3. The Lords of 48.3.2. 3 aff. Barliament are properly De magno concilioregis, but neither thele, being not pl. 15.

of the kings 30 in Council no specific ref. of the August 20 Parents 23 E.3.5.19E.3. of the Kings Privy Councell, nor any of the rest of the Judges or Barons of the Erchequer are standing Judges of this Court.

Sect, 164. Verb. veigne les Burgej-Judgment.174. W.1.ca. 1.17 E.2. Stat.de templaris.

16 R. z. Stat. de Premunire. 43 Aff. pl. 15. Regift. 124, 125. 191. 27 H. 6. f. 2 R. 3. 10. 6 27 Aug. 5 H. 4. in the Exchange between the King and the Earl of Northumberland, in Turre. 37 E.3 ca. 18.&c. Note the Parliament is called Commune concitium.

It is now, and of ancient time bath been called the Chamber of the diars the this Court.

The name of Star: d 41 E.3. ubisup e In many of the Records before cited. f 25 H.8.ca.1. Lambard.

Sir Tho. Smith. Lib. 2.c2.4.

The processe.

♥ Officers of the Court sworn,

Ecclefiasticus
20.8. Qui potestatem sibi simie
injuste, odietur.
See Statut. de
moneta temps
E. I. 35 E. I.
de Cartisse.
20 E. 3. Ca. 4.
Vid. 33 El. Ca. 2.
And note where
he shall lose his
ears for defamation of the
Queen.

e Star-chamber, the farred Chamber, in respect the roof of the Court is garnished with golden fars. Some have imagined that it should be called the Starchamber, because crimina stellionar are there handled: Others of this Saron word Sceeran, to steer or rule as both the Pilot, because this Court both seer and govern the ship of the Common-wealth. Others, because it is full of windows: but the true cause of the name is, because, as is asocessio, the roof is starred. In all records in Latin, it is called Camera stellara.

The processe in this Court is Suppona, Attachment, processe of rebellion, it,

all under the Great Seal.

In this Court there is the Clerk of the Councell, which is an office of great account, and trust, so, he is to receive, endorse, enter, keep, and certifie the bill, pleadings, records, orders, rules, sentences and decrees of the Court; and I find that in sommer times men of great account have had that office in this Court: as to give you a little taste thereof: Ling H.6. by his Letters Patents, 15 July Anno regnissi 22, granted the same to Thomas Kear Dottoz of the law to, his life, calling him Clericum Concilii nostri, and soon after swoze him of his Privity Councell. Ling H.7. Anno 1. of his reign, granted the same office to John Bladeswell Dottoz of laws soz tearm of his life: But hereof this little taste shall suffice.

Lastly, it remaineth to be seen what jurisdiction this Court hath in punishment, and where, and in what cases this Court may institut punishment by Pillog, papers, whipping, loss of ears, tacking of ears, sigmaca in the face, et. (Fost extendeth not to any offence that concerns the life of man or obtruncation of any member, the ears only excepted, and those rarely and in most hainous and detestable offences.) But herein the swell rule is, that seeing it is an ancient Court, the presidents of the Court are to be followed, and the rather so; that the Court consisteth of such learned and honourable Judges. And novelties without warrant of presidents are not to be allowed; generally some certain rules are to be followed, especially where no presidents are extant in the case. * Qood arbitio Judicis relinquitur, non facile trahit ad essusionem sanguinis: For generall Acts of Parliament which institut punishment, viz. fur forseiture de corps & de avoir, et. these are expounded not to extend to life, or member, but to imprison ment, et.

See the First part of the Institutes, Sect. 745. Verb. Felony. Majore pæna affectus, quam legibus statut'est, non est infamis. Pæna gravior ultra legem posita æstimationem conservat. Consessus in jure pro judicato habetur, cum quodammodo sua sententia dammatur. Cum consitente sponte mitius est agendum.

In hae Curia non agitur de delictis ordinariis, ne dignitas hujus curia vilesceret, Quicquid Judicis authoritati subjicitur, novitati non subjicitur.

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CAP. VI.

A Court for redreffe of delayes of Judgements in the Kings great Courts.

-His Court is raised by the statute of 14 E. 3. which followeth in these

Item, Because divers mischieves have happened of that, that in divers places, as well in the Chancery, as in the Kings Bench, the Common Bench, and in the Exchequer, before the Justices assigned, and other Justices to hear and determine deputed, the judgements have been delayed, fometimes by difficulty, fometimes by divers opinions of the Judges, and somerime for some other cause: It is assented, established, and accorded, that from henceforth at every Parliament shall be chosen a Prelate, two Earls, and two Barons, which shall have commission and power of the King to heare by Petition delivered unto them the complaints of those that will complaine them of such delayes and grievances made, and they shall have power to do come before them at Westminster, or elsewhere, where the places or any of them shall be. the tenor of Records and Processes of such judgements so delayed, and to cause the same Justices to come before them, which shall be then present to heare their cause and reasons of such delayes: which cause and reason so heard by * good advice of themselves, the Chancelor, Treasurer, the Justices of the one Bench, and of the other, and other of the Kings Councell, as many and fuch as shall seem convenient, shall proceed to take a good accord, and make a good judgement: and according to the same accord so taken, the tenor of the same Record, together with the judgement which shall be accorded, shall be remaunded before the Justices, before whom the Plea did depend; and that they shall give judgement according to the same Record: and in case it feemeth to them that the difficulty be so great, that it may not well be determined without affent of the Parliament, that the faid tenor or B. Mulit, &c. tenors shall be brought by the said Prelate, Earles, and Barons in the next Parliament, and there shall be a finall accord taken what judgement ought to be given in this case, and according to this accord it shall be commanded to the Judges before whom the Plea did depend, that they shall proceed to give judgement without delay.

14 E. 3 cap. 5. ftar. r. Rot. Parl. 2 R.3. nu. 63. confirmed by Parliament.

Judgements de-

* Nota, by good advice of the Chancellour, Treasurer, and liffices. Good accord.

vide Regist. Kex Johanni de

Before the making of this Catute, delay of Judgements was forbidden both by the Common law, and by Ads of Parliament. By the Common law. 1. It is required, that Plena & celeris julticia fiat partibus, &c. not plena alone, noz celeris alone, but both plena & celeris. All Witts of Pracipe quod reddar, are, Quod juste & fine dilatione reddat, &c. All judiciall derits are fine dilatione, &c. 2. There did and pet both live a Warit de procedendo ad judicium, when the Julices of Judges of any Court of Record, or not of Record, delayed the party plaintife or defendant, demandant or tenant, and would not give judgement: and thereupon an Alias, Plur, and an Attachment, tc. dothlye. And the words of the

Regift. 131.2. F.N.B.23.c. And fo upon Conulans granted.

Regist.fo.22. F.N.B.153 b &c. Cuft.de Norm. cap. 27.

For redresse of Delayes of Indgements. Cap.6.

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Diuturna dilatio.

Warit be, Quia redditio judicii loquelæ quæ est coram vobis, &c. de quadam transgressione eidem A.per præsar B. illata, ut dicitur, diuturnam cepit dilatione ad grave damnum ipsius A.sieut ex querela sua accepimus; Vobis præcipimus quod ad judicium inde reddendum cum ea celeritare quæ secundum legem & consuetudinem regni nostri procedas, &c.

Regist. fo. 18. F.N.B. fo.20.2. 3. L'thewise when Austices of Auges of any Court of record, of not of record gave judgement, and delayed the party of his execution, the party grieved may have a Writ De executione judicii; by which Writ the Austices of Auges are commanded, Quod executionem judicii nuper redditi, &c. de loquela qua fuit, &c. per breve nostrum, &c. sine dilatione fieri fae'. And thereupon an Alias, Plur' and Attachment, &c. do lye.

See hereafter, ca. Exchequer and Exchequer Chamber. 4. By the meeting together upon adjournment of the cause out of the Court, where the cause dependeth, &c. All the Judges, &c. which now we call an Exchequer Chamber cause, warranted by the Common law and ancient presidents before this statute: and the frequent use of this Court of Exchequer chamber hath been the cause that this Court upon the Act of 14 E. 3. hath been rarely put in are.

2 E.3. fo.7. Ellys Callers case Bract.lib.1.ca.2. Rot.Parl.14 E.3. nu. ulr. Sir Geff. Stantons case. 5 By the Lings Arit comprehending quod si dissipular aliqua intersit, that the Record should be certified into the Parliament, and to adjoin the parties to be there at a certain day. Si obscurum & difficile sit judicium, ponantur judicia in respect usque magnam curiam. An excellent Record, subrecos you may read in the Parliament holden at Arithmeter the Duesday after the translation of Becket, anno 14 E.3.

Mag.Cart.ca.29

Secondly, by Acts of Parliament. Nulli vendemus, nulli negabimus, aut dif-

2 E. 3. fo. 3. per Aldham. 14 E. 3. jour. 24. 18 E. 3. 47. 57. 31 E. 3. an. 161. 39 E. 3. 37. 11 H. 4. 5. 76. 9 H. 6. 58. b. 5 E. 4. 13 2. Fortele. cap. 5. F. N. B. 240. d. * Regist. fo. F. N. B. 240. d. That it thall not be commanded neither by the Great-scale, nor by the Little scale, nor by Letters, nor any other cause to delay right: and albeit such commandement come, sc. that by them the Justices succease not to do right inno manner. Vide 2 E.3. cap.8, 14 E.3. cap.14, 18 E.3. stac.3. 2 R.2. a statute not in print, Rot. Parl.nu.51. whereby it is enacted, that no Justice shall stay justice for any Warit, Letter of the Great-scal or Privy-scal, or other commandement whatsoever against the laws and statutes before that time made. Rot. Par. 2 H.4. nu.64. Anno 5 H.4. nu.33. all which are declaratory of the Common law. * And tipon the said Act of 2 E.3. a Warit is framed, directed to the Justices, by which they are commanded, Quod ad justiciam partibus, &c. saciend' virtute alicujus mandati de magno sigillo, & parvo sigillo vobis direct' seu dirigend' nullatenu supersedeatis, &c. And thus much sor the Common law and Acts of Parliament.

This statute of 14 E.3. cap. 5. consisteth on two generall parts, viz. the Dies amble and the Body of the Ad. In the Preamble three things are to be observe ved. 1. That (notwithstanding the provision of the Common law) mischiefs do happen by delay of judgements. 2. It enumerateth in what Courts these delayes do happen, viz. in the Chancery, in the Kings Bench, the Common Bench, and the Erchequer, the Justices assigned, and other Justices to hear and determine deputed. 3. It declareth how these delayes have grown, viz. sometime soz difficulty of the matter in law, sometime in diversity of opinion of the Judges, and fometimes for some other cause, that is, by Commandements, Letters, or Pelfages of the King or Great Hen, sc. In the Body of the Active have collected many observations. 1. That at every Parliament there Mall be chosen a Prelate, tivo Carls, and two Barons, (or one Bilhop, two Carles, and two Barons.) viz. At this Parliament were chosen, 1. John Stratford Archithop of Canterbury, (a man famous for learning, loyalty, and vertuous living.) 2. Rich. Firzalan Carle of Arundel, a man of great wisdome, prowes, and integrity. 3. William Clynton Carle of Huntingdon, and Admirall of England, a man lately before advanced for his fingular valour, wisdome, and vertue. 4. The Lord Wake of Lidel, and 5. Ralph Lord Baffet of Drayton, two of the most renowned Barons of England, Quos omnes honoris causa nomino. 2, This

Cap.6. For redresse of delayes of Indgements.

2. This Act doth appoint that the Pzelate, two Carls, and two Barons are to bave a Commission and power of the Bing under the Breat Seal (and none of them can be absent) which Committion is to endure untill the nert Parliament.

3. This Commillion and power confiftethon ten parts. 1. Ad audiendum, to hear the petition delivered to them, the complaints of those that will complain them of fuch delayes or grievances made. 2. Ad venire faciend' to do come before them at Wellminter, or elfe where, the tenor of the Records and Processes of fuch Audgements to delayed; and this is to be done by the Kings Wirit of Cerporari. 3. Ad venire faciend', to caufe the fame Juftices to come befoge them. 4. Ad audiend' fuas rationes & causas talium dilationum, to hear their reasons and causes of such delayes which ought to be entred of Record. 5. Which caules and realons to heard, Ad procedendum, to proceed to make a good accord. 6. But this must be done not only by themselves, but by the good advice of certain affiftants appointed by the Ad, viz. the Chancelour, Treafurer, the Juft! es of the one Bench and the other, and other of the Kings Councell, 45 many, and fuch as they thall think convenient. 7. Ad capiendum, to take a good accord of the affiftants. 8. Ad faciendum, to make a good judgement. 9. Ad remans dandum, to remaund before the Justices, before whom the plea did depend, the tenot of the faid Record, together with the judgement that so shall be accorded. Laftly, that those Justices thall presently give judgement according to the said Record.

A Commission granted in 18 E. 3. grounded upon this statute, and referring Ror.pat. 18 E.3. to the same being enaced, as there it appeareth, at a Warliament holden die Mer- 2 part. curii proxim' post medium Quadragesima Anno 14 E.3. regni Anglia & Francia primo, there being two Parliaments in that year, which you may reade, being

mosthy of observation, for it is a good exposition of this Act.

4. It is further provided by the faid Act of 14 E.3. that in case it seemeth to them, that the difficulty is so great, that it cannot well be determined without alfent of Parliament, that the tenoz or tenors thall be brought by the fato Prelate, Earls, and Barons unto the nert Parliament, and there thall finall accord be taken what judgement thall be given in this cafe.

a It is better that the demandant be delayed, then the tenant differited, or that Rules concerthe law be altered. Shard. we cannot not will belay any man in respect of our ning delayer,

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b The Justices ought to delay no man in the name of the King where the King hath no right. The demandant thall not be legally delayed fivice for one cause.

Delay in a Quare impedic, though it be by effoign, is a diffurbance. d Semper fur est in mora, e In circuitu impii ambulant.

In divers cases the party grieved thall have an action for unjust delay.

g Tolle moram, semper nocuit differre paratis.

But feeing neither the Common law, not any of the Acts of Parliament do ertend to Ecclesiasticall Courts, it is then demanded, what if an inferiour Didinary will refuse, or delay to admit and institute a Clerk presented by the right Patron, to a Church within his Dioces, or the like: Dr Delay, or refuse to give lentence in a cause depending before him. It is answered, That the Archbishop of the Province may grant his b Letters under his Seale to all and fingular Clerks of his Province, to admonith the Dedinary, within nine dayes to performe that which by justice is defired, or otherwise to cite him to appeare before g Oviding, him or his Officiall at a day in those Letters prefired, and to cite the party that hath suffered such delay, then and there likewise to appeare, and surther to intimate to the faid Didinary, that if he neither perform that which is enjoyned, nor appear, he himselfe without further delay will performe the justice required. Dr in the former of the faid cases, the party delayed may have his Quare imp, but that is thought not to be so speedy a remedy.

4 18 E.3.54. 2. 13 H.4. 4. 24 E.3.64 a. b 4 E.3. 2.3. 22 H.6.39. per Newton. 10 E. 3. 57. 40 E.3.22.&c. C 4 E.3.14. 6 E.3.4. d Brackon e Pfal-12.9. 44 F.3.4. 18 E 3.12.13. 20 H.6.10. F.N.B.96.f.97.b. h This is called duplex querela, neceffary to be known for finding of Instituti-

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CAP. VII.

The Court of Kings Bench, Coram Rege.

Libz. cap.7.

Fo. 108.2.

* Nota.

* A granter prohibitions.

Liber niger in Scaccario, cap.4.

* Note this word a Sce Britton f. 1. speaking of the King, Et pur ceo que vous ne suffifons in nostre proper person a our & terminer touts querels del people. Avomus partie nostre charge en plusors parts come eft ordeme, &c. 20 F.3.cap I. 6 Stat.de Marlb. 52 H 3.ca. 1. Vid. 4 H. 4.ca 22. c 24 H.8.cap. 2. in effect. d Bract.lib. 1.ca.5 fol.3.b. e 20 f.3.cap. 1. speaking in the Kings perfon.

W.1.An.3 E.1. cap.1. Fleta lib.1.ca.29. Racton both make in few woods a notable expection of this Court. Habet Rex plures Curias in quibus diverse actiones terminantur, & illarum curiarum habet unam propriam, sicut Aulam regiam, & Justiciarios capitales qui proprias causas regias terminant. & aliorum omnium, per querelam, vel per privilegium, sive libertatem. And soon after speaking of the Justices of this court satth: I tem Justiciariorum quidam sunt capitales, generales, perpetui, & majores à latere regis residentes, qui omnium aliorum corrigere renentur injurias, & errores,

And Britton satth: In droit des Justices que sont assignes de nous sur & tene nostre lieu ou q nous seons en Angliterre. Voilons que eux eiant conssande amender saux judgements, & de terminer appeales & auters trespasses faitzen conter postre peace, & * enconter nostre justidiction, & sour record se esteur

folong; ceo que nous manderons per nostre bre.

Fleta in describing this Court saith: Habet & Rex Curiam suam & Justiciarios suos tam milites quam clericos locum suum tenentes in Anglia, coramquibus, & non alibi nisi coram semeripso & concilio suo vel Auditoribus specialibus
salsa judicia & errores Justiciariorum reverumtur & corrigontur: ibidem etiam
terminantur brevia de appellis, & alia brevia super actionibus criminalibus &
injuriarum contra pacem regis illararum impetrata, & omnia, in quibus contintur ubi tune suerimus in Anglia.

In the Black Book of the Orthequer, it is thus faid of the Chief Julicest this Court: Capitalis Justicia præsider primus in regno. Dut of these thise an-

ctent Authors we observe these fir conclusions.

First, where Brackonsaith, Habet Rexplures curias in quibus diversa actions "terminantur; Bereby, and ineffect by a Britton, and this conclusion followeth, that the Ling hath committed and distributed all his whole power of judicature to severall Courts of Instice, and therefore the judgement must be ideo consideratum est per Curiam. And herewith do agree divers Acts of Parliament and Book cases, some whereof, sor thustration, we will briefly remember; and leave the judicious reader to the rest.

b Provisum, concordatum & concessium est, quod tam majores quam minore justiciam habeant & recipiant in curia Domini Regis. That the lawes Ettless afficall and Demporall were and yet are administred, adjudged, and crecuted fundry Judges, tc. d Expedit etiam magistratus reipublica constitui, quia per cos qui juredicendo prasunt essectus rei accipitur; parum est enim jus in civitate esse,

'n fi fint qui possant jura gerere.

conscience, and to keep our Oath, by the assent of our Great men and other of our Councell, we have commanded our Justices, that they shall from henceforth do even law and execution of right to all our Subjects, rich and poor, without having regard to any person, without letting to do right for any Letters or commandement which may come to them from us, or from any other, or by any other cause.

Agreeable to that great Canon of the law Anno 3 E. 1. which we have translated into Latin: Rex pracipit quod pax facrofancta Ecclesia & regni solide custodiatur & conservetur in omnibus, quodq; justitia singulis cam pauperibus quam

divicibus

divitibus administratur, nulla habita personarum ratione. See the second part of the Institutes W. 1. cap. 1.

8 H. 4. the King hath committed all his power judiciall, some in one Court, and some in another, lo as if any would render himselfe to the judgement of the Bing in fuch case where the king bath committed all his power judiciall to o. thers, fuch a render thould be to no effect. And 8 H. 6. the Bing doth judge by his Indges (the King having diffributed his power judiciall to feberall Courts) and the Bing hath wholly left matters of judicature according to his lawes to

And albeit it be enacted that the Delinquent thall be fined at the will of the 2 R.3.fol. 11. Bing, Non Dominus Rex in camera sua, nec aliter nisi per justiciarios suos (finem imponit) & hac elt voluntas regis, viz., per Justiciarios & legem fuam, unum est

dicere.

The fecond conclusion is, that in those dayes this Court of Lings Bench did follow the Court : and therefore Bracton calleth it Aulam regiam, because they fat in the Bings Ball. Britton calleth the Juftices of this Court, Juftices affignes de nous suer : and Flera, Ubi tunc fuerimus in Anglia.

The third is, that it is called the Kings Bench, and the Pleas thereof Coram rege: because in this Court (as Bracton saith) those Capitales justiciarii proprias regis caufas terminant, and therefore the lating himfelte cannot be Judge in

propria caufa.

The fourth is, that under thefe words proprias causas are included three things. Firf, all pleas of the Crowne; as all manner of treasons, felonies, and o: ther pleas of the Crown which ex congruo, are aptly called propria canfa regis, because they are placita corona regis. Secondly, regularly to examine and correct all and all manner of erroes in fair, and in law, of all the Judges and Justices of the * Realm in their suggements, processe, and proceeding in Courts of record, and not only in pleas of the Crown, but in all pleas, reall, personall, and mirt, (the Court of the Erchequer excepted, as hereafter thall appear.) And this is proprium quarto modo to the King in this Court : for regularly no other Court hath the like jurifdiction, and therefore may be well called propria causa regis. and these two be of high and soveraign surifdiction. - Thirdly, this Court hath not only jurisdiction to correct errors in judiciall proceeding, but other errors and mildemeanours extra judiciall tending to the breach of the peace, or opprefiton of the lubieds, or railing of faction, controberly, debate, or any other manner of milgovernment; fo that no wrong or injury, either publick or private, can be done, but that this hall be reformed or punished in one Court or other by due course of law. As if any person be committed to pilon, this Court upon motion ought to grant an Habeas corpus, and upon returne of the cause do justice and res lieve the party wronged. And this may be done though the party grieved bath no priviledge in this Court. It granteth prohibitions to Courts Temporall and Ecclesiafticall, to keep them within their proper jurifoidion. Court may baile any person so; any offence whatsoever. And it a Freeman in City, Burgh, or Town corporate be disfranchifed unfultly, albeit be hath no pribiledge in this Court, pet this Court may relieve the party, as it appeareth in James Bagges cafe, ubi fupra, & fic in fimilibus.

Fourthly, this Court may hold plea by Warit out of the Chancery of all tref-

palles done Vi & armis, of Replevins, of * Quare impedir, &c.

b bee the second part of the Institutes, the 11 Chapter of Mag. Carta, Commu-

nia placita non sequantur curiam nostram,

Fifthly; this Court hath power to hold plea by Bill for debt, detinue, cobenant, promise, and all other personall actions, ejectione firme, and the like, against any that is in custodia Mareschalli, or any Difficer, Minister, or Clerk of the Court : and the reason hereof is, so, that if they should be sued in any other Court they hould have the priviledge of this Court, : and lest there should be a fayler of Justice (which is so much abhorred in taw) they thall be impleaded here by Bill though these actions be common pleas, and are not reftrained by the said Act

8 H.4.fo. 19.

8 H.6.10 & tit. Grant. F.5.

Of these you may reade in Glanvil lib. 1. cap. 2. &c. & lib. 10.cap. 18. and in the third part of the Inftitutes per toth, & Stanf. per totum.

And in Ireland of errors in the Kings Bench. there. Lib. 7. fo. 18. F.N.B.12 34 Aff. 7. 39 E.3. Error 88, a Lib.11.fo.98. Jam. Bagges cafe Vid. 10 E.3.ca.3. Marshallea.

F. N. B.89.92. Tr.19 E.3. coram rege Rot. 56 ba part of the Institutes, Magna Carta, cap. 11.

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See the second part of the Institutes, ubi sup. 27 H. 3. coram Rege. Rot 9. Hus & Haut.

31 H.6.10.b. adjudge. of Magna Carta, ubi supra. Likewise the Officers, Ministers, and Clerks of this Court priviledged by law in respect of their necessary attendance in Court, may impleade others by Bill in the actions sozesatd. And all this appeareth by Bracton, who lived when Magna Carta was made, ubi supra: where he satth, Et aliorum omnium per querelam vel per privilegium sive libertatem. And continuall experience concurreth with antiquity herein.

H. P. captus per querimoniam mercatorum Flandria & imprisonatus offen domino regi Hus & Hant in plegio ad fiandum recto, & ad respondendum pradictis mercatoribus, & omnibus aliis qui versus eum loqui voluerint, &c. This plea was after the fratute of Magna Carta, Anno 9 Hig. Df thefe words Hauk Hant, two French woods, Hus fignifping an Cloer-tree, and Hant the ftaffe of a Balbert, ac. Heave the conjecture that some have made thereof to themselbes: we think it was then common bail changed now to Do and Ro, and the rather for this word [offert.] And it is observable, that then putting in baile at one mans fuit, be was in custodia Mareschalli to answer all others which would be him by Bill, and this continueth to this day. If any perfor be in cultodia Mare. schalli, &c. be it by commitment, or by Latitat, bill of spid or other Proces of late. it is sufficient to give the Court jurisdiction: and the rather, for that the Court of Common pleas is not able to dispatch all the subjects causes, if the faid actions should be confined only to that Court. And feeing none but Serjeants at lab can practice in the Court of Common pleas, it is necessary that in this Court of Bings Bench Apprentices and other Counsellors of law might by experience in able themselves to be called Serjeants afterwards; otherwise Serjeants must want experience, which is the life of their profestion. And the proceedings in their Court for fo long time, t under fo many honourable Judges and reverend have of the law, bath gotten such a foundation, as cannot now without an Act of Bar liament be thaken. And the errors in the Bings Bench cannot be reverfed (but in certain particular actions by the flatute of 27 Eliz, cap.8. Wherein the jurifly ction of the Tourt is faved) but in the Digh Court of Parliament, as before in the Chapter of the Court of Parliament appeareth.

Sirthly, if a Writ in a reall action be abated by judgement in the Court of Common pleas, and in a Writ of Crroz the judgement is reversed in this Court, and the Writ is adjudged good, this Court shall proceed upon this Writ, and is not restrained by Magna Carta, ubi supra, ne curia Domini Regis defi-

ceret in institia exhibenda.

This Court may hold plea in Attile of novel diffeifin without any patent, in it is querela and not placitum, and so not within these woods communia placities, as it hath been expounded and warranted by continual experience.

A Scire fac' to repeal a Patent of the King may be brought in this Court, And where Fleta saith, Nisi coram semerips & concilio suo, vel Auditoribus specialib' falsa judicia ac errores justiciariorum revertuntur: It is to be known that all the Common law errors in the Court of Erchequer (being the proper Court of the King for his revenue and profit) were eraminable before Commissioners appointed by the Kings Warit under his Great Seal, which Fleta here calleth Auditors speciales. But now by the statute of 3 I E. 3. the Chancelour and Treasurer taking to them the Justices and other sage persons, such as to them seemeth to be taken, shall examine the errors in the Erchequer, 4c.

a In ancient time, when pleas were holden in Parliament, when the parties descended to issue, the Record was adjourned into the Kings Bench to be tried

there.

b See the flatute of W. 1. against preposterous hearings in this Court, and

the exposition of the same in the second part of the Institutes.

By the statute of Arric' super Care, the Chancelour and the Instices of the Lings Bench were to follow the Court: but notwithstanding both the Chancery and the Lings Bench were at this time settled Courts, during the severall

lib.2.ca.6. & lib.11.ca.1. Coram Insticits Domini Regis in Banco sedentibus. Vid. Adjudicat' coram Rege in every Terme, from 1 E.1. during all his reign in every severall Term in the yeare. And in all those times and Termes the Court of Chancery did sit.

1 H.7.12. 14 H.7.14. 21 E.3.46. 11 H.4.49 in nativo habendo.

F.N.B. 177, 30 aff.35. Aff. de mord.

3 H. 4. 7.

See more hereof in the Chapter of the Exchequer. 31 E.3.cap.12.

a Rot.Par. 18 E.z nu. 97. Placit. Int. Jo. de novo Burgo & Regman, &c. b W.1. cap. 14. Against preposterous hearings. c Art. sup. cart. 28 E.1. cap. 5. Glan. temps. H. 2 ks of

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Terms of the year, as by infinite records both before and after this fatute both appear. So as at this time they did not attend in the Bings Court, but when they were called, yet were accounted as parcell of the kings houshold as long as they followed the Court : But this cumbersome attendance wholly ceased in the reign of E. 3. and yet the Load Chancelour would have had his purbepe ance, as if he had continued till as one of the houthold, untill he and all others, but those of the Bings, Ducens, or Princes houshold only, were restrained by 34 E.3.cl.2. ad of Parliament. 34 E.3. cap.2.

Alfo upon perufall of the Records in the reign of H. 3. from the beginning And fo did the of his reign untill the ending of it, this Court fat in the Term time where the Chancery both other Courts of Justice Did fit. And the pleas were filed to be holden Coram Rege as to this day they are: and this appeareth by Fitzh. Abatogment, in but one Court the titles of Corone, of Brief, of Wast, &c. and by Bracton toho in many places asit appeareth in boucheth Judgments in the reign of H. 3. in Terms Coram Rege. And this the Chapter of appeareth alfo in elder times: but hereof thus much thall fuffice to probe, that at the Court of the making of the faid Act of 28 E. 1. and long before; this Court in Acrm times lat with the Kings other Courts, and specially for Pieas of the Crown, &c. and that the faid Act is to be intended, that the Chancelour and the Judges of this Court thould attend the King and follow the Court when they were required.

It is trulp faid that the Buffices De banco Regis have Supream authority, the 3 11. Dier 187. hing bimlelf fitting there as the law intends. They be more then Juftices in 27 Aff. p.1.

The Juftices in this Court are the loveraign Juftices of Oier and Termi- 7 E.4.18. ner, Gaol-delivery, conferbators of the peace, ac. in the Realm. See the books 4 H 7.18. in the margent, you thall find excellent matter of learning concerning the fue fo. 118, a & b. pream jurisdiction of this Court.

In this Court the Kings of this Realm have fit in the Digh Bench, and the Indges of that Tourt on the lower Bench at his feet; but Judicature only Lelong. eth to the Judges of that Court, and in his prefence they answer all motions, tc.

The Justices of this Court are the soveraign Cozoners of the land, and 17 E.3.13.4. therefore where the Sherif and Coroners may receive appeals by bill, a Fortio-

ti the Justices of this Court may doe it.

50 high is the authority of this Court, that when it comes and fits in any County, the Justices of Eire, of Oier and Terminer, Gaol-delivery, b they which have conusance, sc. doe cease without any writing to them, But if any indiament of Treason or Felony in a forain County be removed before certain Eg.n= millioners of Oier and Terminer in the County where this Court lits, pet they Ro 99 Chicheft. map proceed, because this Court (for that this indiament was not removed before them) cannot proceed for that offence. But if an indiament betaken in Midd, in the Macation, and after this Court fit in the next Term in the fame County (if this Court be adjourned) then may speciall Commissioners of Oice and Terminer. &c. in the interim proceed upon that indiament, but the more ufuall way is by speciall Commission. And all this was resolved by all the Judges of England at Minchester Term, Anno 1 Jacobi Regis, in the case of Sir Everard Digby and others : and to had it been refolbed, Mich. 25 & 26 Eliz. cafe &c. in the case of Arden and Somervile, for this kind of speciall Commission of O'er Pl. Com. fo. 388. and Terminer: and herewith agreeth Pl. Com, in the Carl of Leic' cafe, Anno Count de Leic' 1 Mar. reginæ.

And so supream is the jurisdiction of this Tourt, that if any Record be re- 22 E.3.6.6. moved into this Court, it cannot (being as it were in his center) be remaunded 24 E.3 73. back, unlesse it be by Act of Parliament. And this appeareth by the Judgment Stanf.pl.Cor. 13. of the Parliament in Anno 6 H.S. but by the authority of that Act indiaments of felonies and murders removed into the Kings Bench may by the extended only Justices of that Court be remaunded, and this Court may fend down as well to Felonics and the bodies of all Felons and Purderers, as their indiaments into the Couns Murders. ties where the same murders or selonies were committed or done, sc. in such manner, ac, as if the indiaments had not been brought into the Bings Bench.

of them being to

14 H.7.21. ling. Segmor Sanchers

Lib.4.fo. 57. in the Sadlers cafe. Pl. Com. 262. azı aff.12 27 aff.1. 28 aff. 52.21 H.7. 6 Pafch. 12 E. 2. Coram Rege, W. 1.ca.3. Lib. 9. fo. 118. Ubi fupra.

Hil. 1 Jac. Sir Walter Raleighs case acc'.

See before cap.
Parliam pag, 21.
when a writ of
Error is fued of
a Judgment, Coram rige, they
proceed super renove records, and
the record is selfremaineth in this
Court.
2 H.4. cap. 10.

26 aff.p.47.

Defignatio Jufticiariorum est à rege, jurifdictio vero ordinaria à lege.
* Glanvillib. 1. ca.6.13.&c. fxpenumero. a Lib. nigroin Scaccario. par. 1. ca.4. Never in any legall record (Which we have fcen) they were called Summi Ju-Riciari. Rot. Cart. 45 H.3.13 Aug.

Capitalis Justi-

* This was the original juridition of this Court.

But the Inftices of the kings Bench of their own authority may grant a Niferrius in case of treason, selony, and other pleas; for there they send but the transcript of the Record, and not the Record it self, as thall be said in the Chapter of Inftices of Nife prius. But if the Inftices of the kings Bench does perceive that any indiament is to be removed into that Court by practice or so, delay, the Court may resule to receive the same, before it be entred of Record, and remained the same back again so, justice to be done.

By the fratute of 2 H.4. the Clerk of the Crown of this Court, if four score or an hundred men be indiced of felony or trespace, of one felony, or one trespace, and they plead to an idue, as not guilty, the said Clerk ought not to take for the Venice sac', nor for the entring of the plea but two chillings only, and not two chillings so every one, which Act is made in affirmance of the Common-law. So if one man be indiced of two several selonies or trespaces, and is acquited, he shalpap

but for one beliberance.

Dut of this Court are other Courts derived, as from one fountain several springs and rivers, in respect of the multiplicity of causes, which have increased. Jurisdictio issues are originalis seu ordinaria, & non delegata. The Austices of this Court have no Commission, Letters Patents or other means to hold pleas, 1c. but their power is originall and ordinary. They were called anciently Justicia, Justiciarii, locum tenentes domini regis, &c. The Chief Austice, Justicia Auglia, Justicia prima, Justiciarius Auglia, Justiciarius Auglia capitalis, and Justiciarius noster capitalis ad placita coram nobis terminand. To observe the changes of these names, and the reason and change thereof, is were thy of observation,

Before the reign of E.1. the Thief Justice of this Court was created by Letters Batents, and the form thereof (taking one example for all) was in their

mozds.

Rex, &c. Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Vicecomitibus, Forestariis, & omnibus aliis sidelibus regni Anglia, Salutem. Cum pro conservatione nostra, & tranquillitatis regni nostri, & ad justitiam universis & singulis de regno nostro exhibendam constiturimus dilectum et sidelem nostrum Philippum Basset Fusticiarium Anglia quamdiu nobis placuerit capitalem. Vobis mandamus in side qua nobis tenemini sirmiter injungentes, quatenus in omnibus qua ad officium fusticiarii pradicti, nec non ad conservationem pacis nostra et regni nostri eidem dum in officio pradicto steterit, plenius sitis intendentes. Teste Rege, &c.

Herein 6. things are to be observed. 1. That the creation of his office was by Letters Patents. 2. That this officer was oxiginally instituted for three things. 1. Pro conservatione noftra. 2. Tranquillitatis regni nostri. 3. " Ad justiciam universis & singulis de regno nostro exhibendam. The third thing to be observed is, that he was titled Jufticiarius Angliz capitalis. 4. That Philip Baffet was constituted Chief Justice of England, and after made Unight, to, he was not knight at the making of the Letters Patents. was of Melledby in the County of Bothampton, was excellently learned in the laws of the Realm; he was pounger brother of Baron Baffet of Draiton Baffet in the County of Staff. 5. That he was constituted quamdin nobis placueric Lastly, the clause of attendance, and the persons that are to give attendance, ec. to him, are very remarkable. This Philip Baffer was the last of this kind of creation by any like Letters Patents, and he died Thief Justice neer to the end of the reign of H.3. Ming E. 1. being a wife and paudent Paince, knowing that Cui plus licer quam par eft, plus vult quam licer, (as most of these summi Justiciarii did) made three alterations. 1. 13p limitation of his Authority. 2. 13p changing Summus Justiciarius, to Capitalis Justic. 3. 13p a new kind of creation, viz. by Writ, left if he had continued his former manner of creation, he might Nife

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might babe had a befire of his former Authority, which three doc express ans pear by the Warit pet in ufe, viz.

Rex, &c. E.C. militi Salutem. Sciatis quod conftituimus vos Juficiarium nostrum capitalem ad placita coram nobis tenenda, durante benepla-

cito noftro. Tefte, &c.

Which wait being called Breve both in few words comprehend the fubstance of the former Letters Watents: for Capitalis Jufticiarius nofter and ad placita coram nobis tenenda includes all that which was truly intended to be granted to him in the former Letters Patents, which alterations were made by Author rity of Parliament, though not now extant. For it is a rule in law, that ancient offices must be granted in such forms and in such manner, as thep babe used to be, unlesse the alteration were by Authority of Parliament, And contimuallerperience approbeth, that for many fuccestion of ages without intermif. fion, they have been, and yet are called by the faid wait, Et optimus legum interpres consuerudo. But after the said alteration,viz. in anno 25 E.I. Reginaldus de Grey (was filed) Justiciarius Anglia, and he was in legall proceedings called Capitalis Justiciarius poster, when his Patent was, Capitalis Justiciarius Angliz.

The have feen a ffine in these words: Hac est finalisconcordia facta in curia domini regis apad Westm' à die Sancti Michaelis in tres septimanas, anno Regni Regis Henrici filii regis Johannis 3. coram domino Huberto de Burgo capitali Iulticiario Anglia & aliis domini Regis fidelibus tunc ibi prasentibus.

In the writ De homine replegiand', he (which was formerly called Capitalis Infliciarius Anglia) is called Capitalis Inflic' nofter, and cometime Cap. Inflic' Regis. The file of this Court of Kings Bench is Anglia in the margent : and in divers Adsof Parliament he is called Chief Justice of England, 34 H.S. cap. 26. 37 H. 8.cap. 12. 2 E. 6. cap. 13. 5 E. 6. cap. 1 1.

The Chief Juftice in Ireland is called Capicalis Infliciar' Hibernia at this day. Pasch, 13 E. 1. (the pleas in this Court are Coram rege) then were tiled thus, Placita coram locum domini registenentihus, &c. Ideo venit inde jurata coram rege vel ejus locum tenentibus, 15 Pascha, &c. within which words all

the Judges of the Linas Bench were included.

Anno domini 969, in the Abby of Ramfer this Cpitaph was ingraven, 4c. D. Ailivinus inclyti regis Edgari cognatus totius Anglia . Aldermannus, c. Inho was without question Thief Justice of all England. Inter leges Aluredicap. 34. he is called Coninger ealderman, i. Regis Aldermannus five Senator, five

ludex. Vide cap. 3. 15. & 38. Et inter leges Edovardi ca.35.

The rest of the Judges of the Kings Bench have their offices by Letters Datents in these words. Rex omnibus ad quos præsentes literæ pervenerint, Salutem, Sciatis quod conftituimus dilectum & fidelem Iohannem Doderidge militem unum Iufficiariorum ad Placita coram nobis tenenda durante beneplacito noftro, Tefte &c. . Thefe Juftices of the Lings Bench are filled 1. Capitales. 2. Generales. 3. Perpetui. 4. Majores à latere regis residentes : but the Thief Justice is only called by the King, Capitalis Iusticiarius noster. They are called 1. Capitales, in respect of their supream jurisdiction. 2. Generales, in res spect of their generall jurisdiction throughout all England, ac. 3. Perpecui, so, that they ought not to be removed without just cause. 4. Majores a latere regis residences, for their honor and safety, that they should be protected by the Bing in administration of justice, for that they be a latere Regis.

And where in 5 E.4. it is holden by all the Tuftices in the Exchequer chamber L 5 E.4.137. that a man cannot be Inflice by Warit but by Patent or Commission, it is to be understood of all the Judges, faving the Chief Justice of this Court. But both the Thief Justice, and the rest of the Judges may be discharged by Warit under

the Great Seal.

Pone can be a Judge of this Court unlesse he a Serjeant of the degree of the Coif, and yet in the Writ of Patent to them made, they are not named Derjeants.

See in the chapter of the Constable and Marshill for this point.

Rot.Par.as E.s. so named in the Writ of Parliament to him directed. Nota, this fine was levied, Inter Martinum Abbatem de Miffenden querentem, & Thu Stant Baffet deforcientem de 3 Carren' terre in the Kings Bench, in 3 H.3. before Mag. Car. and fliled Capit. Fulliciar' Anglie. Lib, de Miffenden fo.109. divers other fines with the same stile. a Regist. fo 77. 24 E.1 S at de confultat'. 3 E 3. Coron.361. Lib.Int.Co. tit. action jur le case. Sca.s. b Aldermanni Judices dicti func in diebus illis. c Bract.li 3.f. 108.

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If a Wirit be returnable Coram Infliciaris nostris apud Weffm', it shall be returned in the Common place: but if it be returnable in this Court, it mult be Coram nobis ubicunque fuerimus in Anglia. See the Second part of the Infli-

tutes, Mag. Carr. cap. 11. and the erpolition upon the same.

In former times some ill disposed Clerks of this Court, because they could have no original out of the Chancery for debt returnable into this Court, they month fue out an original action of trefpalle (a meer feigned action) returnable into this Court, and fo proceed to Exigent, (where in truth the cause of action is for bebt) and when the Defendant appeared, ec. all the former proceedings were waved, and a bill filed for the Defendant for debt. This is an unfult practife in berogation of the dignity and honoz of this Court, and worthy of fevere punish. ment according to the flatute of W.1.c.29. When it is found out: Vide in the Chapter of the Court of Common Pleas in the end thereof.

Row that we may here say somewhat to a vulgar objection of the multiplication of fuits in law both in this Court, and other of his Pajeffies Courts at Westm' more then bath been in the reigns of E. 3.R.2. H. 4.H.5.H. 6. E.4. and R. 3. It is to be observed, that there be fir causes of the increase of them, where: of two be generall, the other four particular. The generall be Peace, and Plen to: The particular, 1. The diffolution of fo many Donafteries, Chanteries, to and the dispersing of them into so many severall hands. 2. The Swarm of 3n. formers. 3. The number of Concealors. 4. The multitude of Atturnies.

For the first generall: In the reigns of E. 3. R. 2. H. 4. H. 5. and part of the reign of H. 6. in respect of the wars in France, tc. and in the residue of the reign of H. 6. and in the reign of E. 4. in respect of the bloody and intesting wars, and in almost continuall alarums within the bowels of this kingdome, between the houses of Lancaster and Hoak, there could not be so many suits in law, as fince this king dome bath enjoyed peace; which is the first general cause. Deace is the mother of plenty, (which is the second generall cause) and Plenty the Purle of fuits. In particular, by the diffolution of Monasteries, Chantes ries, tc. and dispersing of them, tc. Apon the statutes made concerning the same (there being such a confluence of Ecclesiasticall possessions) there arose many questions and doubts, whereupon fuits were greatly increased. mers and Relators raised many suits, by informations, writs, sc, in the binas Courts at Westm' upon penall statutes, many whereof were obsolete, inconvenient, and not fit for thole days, and pet remained as fnares upon the fubica, fo as the subject might juttly say with Tacitus, Prius vitiis laboravimus, nunc legibus. 3. Concealogs, Helluones, that endeavoured to Iwallow up Cathebiall Churches and the Ecclefiafticall polletions of Church-men, and the livings of many others of the Kings subjects. Lastly, the multitude of Atturnies, more then is limited by law, is a great cause of increase of suits.

a But now on the other fide, to thew what great hope there is, that fuits in law thall becrease, for that in effect all the particular causes of the increase of

them are taken away, which we have thought good to remember. b for the first, the statute of 35 Eliz. cap. 3. hath remedied part, but the statute of 21 Jac, ca. 2. hath given a plenary falve for the whole mischief, whereof you may read at large in the Third part of the Institutes , cap. 87. against Concealogs, turbidum hominum genus, c For the second, by the statute of 21 Jac. cap.4. Informations, tc. upon penall statutes are to be heard and determined in their proper Counties, and not in the Courts at Westminster, whereby the berations fwarm of Informers, who are best trusted where they are least known, are vanished and turned again to their former occupations. d Concerning Ats turnies the number are let down, and that they ought to be learned and bertuous, and as I understand, the Judges at this time have this matter in const. deration. But besides these, there are some other statutes made for avoiding and decreating of veratious fuits. As an ad in 21 Jac. Regiscap. 16. for limis tation of actions and avoiding suits in law, a good and beneficial law. Another Ac at the same Parliament, cap. 13, for the surther reformation of Icofails,

W.1.ca.29. Vid. 30 H.6.37.2. 30 E.3.32. It is fraud where one thing is pretended, and another done. Multiplication of fuits. Peace. Plenty. Diffolution of Monasteries,&c. Informers. Concealors. Atturnics.]

Silent leges inter arma.

Concordia parvæ tes cielcunt, ex opalentia lites.

* See the preambles of the ftat. of 4 H.4.ca. 18. 33 H 6.ca.7. a Diminucion of fuits. b Polleffions of Monast. and Chanteries, &c. 35 El.ca.3.21 Ja. cap.2. Concealors. c 21 Jac.c3.4. Informers See the Third part of the Inft. cap. against vexatious relators Informers.&c. dAtturnies Rot. Par. 20 E 1. Rot. 4. De Appretis. 15 R.2. nu.28, 4 H.4. ca.18. 33 H.6.ca.7. See Rot. Parl. 13 H 4.nu.63. not in print. c 21 Jac.ca.16.

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fails, a good law for ending of fuits. Another at the fame Parliament, cap. 8. to prevent and punith abutes in procuring of process of Superfedeas of the peace and good behaviour, out of his Pajefties Courts at Wellminfter.ac. inhereby infinite verations, troubles and charges of the subjects are prevented. Another at the same Parliament, ca.23. for avoiding of veratious delays in causes by removing of actions and fuits out of inferiour Courts, wherein the former abuse was peratious, grievous, and chargeable to the subject. A hanch of an Ad at the same Parliament, cap. 16. for pleading of tender of amends in an action of trespalle, Quare claus. fregie, for a trespalle by nealis gence, or involuntary, wherein the Defendant maketh no title, sc, an ercels ient and necessary law for avoiding of triding and beratious suits, especially in Champion Countries. An Act at the fame Parliament, cap. 2. againft 900. nopolies and new projects, tc. a great quiet for the time to come. Anno 3 Caroli Regis nune, cap. 1. The petition of Right concerning the rights and liters ties of all the subjects of this Realm for their repose and quiet. Laftly, the repeal of so many obsolete penall statutes is a great mean of diminution of fuits.

For the above aid generall causes, viz. Peace and Plenty, long may they bappily by the goodnesse of god continue without abuse within this Realm. The kings Bench hath authority for great misprisons and offences, to adjudge and inside corporall punishment, as Pillory, Papers, and the like: whereof you may read many presidents in the Third part of the Institutes, pag. 219, 220.

See the 3. part of the Infl.cop. against Monopelists and Prejectors. 3 Car. Regis c. 3. 21 Jac. ca. 28. 3 Car. ca 4.

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CAP. VIII.

The Court of Chancery.

¶ The Antiquity of this Court, 26 E.3. all. p. 24. and the preface to the third book of Reports. History of Ely; Hugo Petroburgensis, Leland. Fortese, cap. 17.

In the fecod book of the Hiftory of Ely,written in the reign of king Stephen foon after the Conquest. " Curia Canc'. Nota.

Mirror ca.1.§ 3. & vide ca.5. 9. pur le enrolments de pardon le roy in le chancery en te nps le roy Alfred. King Alfred began to reign anno dom. 872. and was father to King Edward Senior, father of the faid Athelitane. * Error Polydori.

Fitz. Stephen rempore H.2.in the end of Stows furvey of Lond. Bracton fo. See Glanv li.12. ca.1. & 5. &c. Fleta li.2.ca.12. Ortain it is, that both the Brittish and Saxon Kings had their Change loss and Court of Chancery, the only Court out of which original write doe issue: As taking some sew examples before the Conquest.

Edward the Confesso, had Reinbald his Chanceloz. This Edward granted many Hannozs, Lands, ic, and Franchises to the Abbot of Aestiminster, and enbeth his Tharter thus. Ad ultimum, carram islam sigillari jussi, & ipse man mea propriationum Crucis impress, & idoneos testes annotari pracepi: and a mongst those witnesses this you shall since Swardus notarius ad vicem Reinbaldi regia dignitatis Cancellarii hanc carram scripsi & subscripsi. De hadallo Lestick to his Chanceloz.

Iting Etheldred also had a worthy name, and a worthy man to his Chancelo. Rex Etheldredus statuit at que concessit quatenus Ecclesiam de Elye ex tune & semper in regis * curia Cancellariæ ageret dignitatem. &c. This is ing began his reign, Anno domini 978. Which albeit it was void in law to grant the Chancelorship of England in succession, pet it probeth that then there was a Court of Chancerp.

Bing Edgar had Adulph: Bing Edred had Thurkettle: Bing Edmond the fame: Bing Athelstane Wolfine their Chancelogs, tc.

For further proof that there was a Court of Chancery before all these kings time, out of which writes remediall issued, as they doe to this day: hear what the Mirror saith, Le primer constitutions ordenus per les viels roys, &c. ordein suit que chescun eyt del Chancery le roy brief remedial a son pleint sans dissipulte, Hereby if appeareth that in the reign of king Alfred there was a Court of Chancery out of which writes remediall issued, which was not then instituted, but affirmed to be a Court then in esse, a enacted that out of that Court writes remediall should be granted without difficulty, which law continueth to this day. And thus much touching the Court of Chancery before the Conquest: and therefore Polydor Virgill, who affirmeth this Court to come in with the Conqueror, perperam erravir.

In a Charter to the Abbot of Mekminster by William the Conqueroz, and amongst the witnesses it is written thus, Ego Mauricius Regis Cancellarius savendo legi, & sigillavi. Arfastus Bishop of Porthelmham in Porst. who translated his See to Thetsord, was also Chancelor to the Conqueror.

Cancellarii Angliæ dignitas est, ut secundus à rege in regno habeatur, ut altera parte sigilli regii, quod & ad ejus pertinet custodiam, propria signet mandata, &c.

Omnia brevia de pace, &c. irrotulari debent in rotulo Cancellaria,

Fleta saith, Est intercatera quodda officiu quod dicitur Cancellaria, quod uno provido & discreto, ut Episcopo vel clerico, magna dignitatis debet committi simul cum cura magni sigilli regni, cujus substituti sunt Cancellar' omnes in Anglia, Hibernia, Wallia, & Scoc' omnesque sigilla regis custodientes ubique prater custodem sigilli privati. Cui associentur clerici honesti, circumspecti domino regi jurati, qui in legibus & consuetudinibus Anglicanis notitiam habeant pleniorem, quorum officium sit supplicationes & querelas conquerentium audire & examinare, & eis super qualitatibus injuriarum ostensarum debitum remedium exhibere per brevia regis.

Breve de forma donationis in revertere satis est in usu in Cancellaria. In Cancellaria & in registro Cancellaria.

For the antiquity and authority of this book of the Register of the Chancery, a part Inflir. feethe first part of the Institutes, Verb. per le Register, and in the @pittle to the Sect. 101. Epift.

ninth book of my Commentaries.

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But to proceed (omitting many others) Robert Parning took the fate and bes gree of a Serjeant at law in 3 E.3. and became the lings Serjeant, and for his of the Court of mofound & ercellent knowledge of the laws, in Trin. Term 14 E.3. was 24 Julii by wait created Thief Juftice of England: in which office he remained untill the 15 of December following, on which day he was made Lozd Treasurer of England. In that office he remained untill the 15 year of the reign of the fame Bing, and then was conftituted Lord Thancelour. This man knowing that he that Wis non eft felknew not the common law, could never well judge in equity (which is a just coas rection of law in some cases) did usually sit in the Court of Common Pleas, (which Court is the lock and key of the Common law) and heard matters in law there debated, and many times would argue himfelf, as in the report of 17 E. 3. it appears.

In the 30 year of E. 3. Sir Robert Thorpe Chiefe Justice of the Common Bleas (not Sir William Thorpe Chief Juftice of England, conbided of forbid hibery) a man of lingular judgement in the laws of this Realm, was conftituted Lord Chancelour of England. And in the Parliament Anno 45 E.z. a grichons complaint was made by the Lords and Commons, that the Realme had bin of long time governed by men of the Church in differifon of the Crown.

and defired that Lay men only might be principall Officers, sc.

Alter the decease of Sir Robert Thorpe 5 Julij Anno 46 E. 3. Sir John Koivet Bnight, chief Juftice of England, a man famous in his profestion, was

made Lord Chancellos of England, who beceased in Anno 50 E.3. &c.

In peruling the Rols of Parliament in the times of these Lord Chancelours. me finde no complaint at all of any proceeding before them. But foone after, Ror. Par. 5 R.a. when a Chancelour was no professor of the law, we finde a grievous complaint by the whole body of the Realm, and a petition that the most wife and able men within the Realm might be chosen Chancelours, and that he feek to redzelle the enormities of the Thancery. But leaving many other Records to their proper places hereafter, we will conclude this point concerning the antiquity and jurifdiction of this Court with the opinion of all the Judges of the Realm in 9 E. 4. in a fuit in the Court of Erchequer against the Clerk of the Bamper in the Chancerp upon his account in the Orchequer, where it was holden by all the Buflices in the Orchequer chamber, that all the Courts of the King have been time out of memozy, fo as a man cannot know which of them is the ancientest Court. And Justice Yong the plaintife demanded of the Justices, what if the Chances lour command me upon a payne, that I thall not fue him? To whom Billing the thief Juffice answered, you are not bound to obey it, because that command. ment is against law : But seeing that toucheth upon the jurisdiction of the Court, let us in the nert place handle that point.

The Iurisdiction of the Court.

In the Chancery are two Courts, one ogdinary, Coram Domino Rege in Can- a 8 E.4.5. cellaria, wherein the Lord Chancelour of Lord Reeper of the Great Seale 9 E.4-15. proceeds according to the right line of the laws and flatutes of the Realmsecundum legem & consuetudinem Anglia. b Another extraoadinary according to the fo 65.b. rule of equity, secundum agrum & bonum. And first of the sozmer Court.

" He hath power to hold plea of Scire fac' for repeal of the Kings Letters pas (Rot. Par. & H.4. tents, of Petitions, monstrans de droits, traverles of Offices, Partitions in Chancerp, of Seire fac' upon recognifances in this Court, Warits of Audira querela, and Scire fac' in the nature of an Audica querela to avoid erecutions in this Court; d downents in Chancery, the Whit de doce affiguanda upon offices found, erecution upon the Statute Staple, of Recognisance in nature of a Statute ftaple upon the Act of 23 H.8. but the Crecution upon a Statute merchant Ror. Par. 18 E. 3. is reformable either into the kings bench, or into the Common place, and all

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Vid.poffea ca. 10 Common pleas,

entia, non eft conscientia, 17 E.3.fo.11.14. 23.37.

Rot. Parl. 45 E.3. Rot. 23.nu.15.

Pl. com.fo. 72. nu.122. 2 R.3.1.

d Regist. 297. F. N.B. 263. Stanf.prær.ca. nu. 41-43.

personall

Rege, Rot. 51. London.

b 10 E.3 61. 24 E.3 65 73.

18 E.3.25.17.
aff. 24.
14 Eliz. Dier 315
Pl.com. 393.a.
d In Par. Tr. 9 h.6
Rot. 5. int. placita
regis.
¶ Officina Iufitte.

Fleta lib. 2.ca. 12.
Bract.li. 5.fo.413
Britton ca. 84.
Fleta lib. 6.ca. 35
& 36.

personall actions by 0, against any Dfficer 0, Hinter of this Tourt in respect of their service or attendance there. a In these if the parties descend to issue, this Tourt cannot try it by Jury, but the Lord Chancelour or Lord keeper delivereth the Record by his proper hands into the Kings Bench to be tried there; because for that purpose both Touris are accounted but one, and after triall had to be remanded into the Chancery and there sudgement to be given. But if there be a denumerer in law, it shall be argued and adjudged in this Court. Pota, the legall proceedings of this Court be not modified in Rols, but remaine in slacin being filed up in the Office of the Pety-bag. Theona sudgement given in this Court a Art of Error doth her retornable into the Kings bench: Are sile of the Court of the Kings Bench ts coram rege (as hath been said) and the sile of this court of Chancery is coram domino rege in Cancellaria, & additio probat minoritatem. And in this Court the Lord Chancelour or the Lord keeper is the sole Judge: and in the kings Bench there are four Andges at the least.

This Court is Officina Justicia, out of which all originall Writs and all Commissions which passe under the Great Seal go forth, which Great Seal is

Clavis regni, and for those ends this Court is ever open.

Di this Court Fleta ubi supra, fatth, Dicunrur Brevia cum fint formata ad fi. militudinem regulæ juris, quæ breviter, & paucis verbis intentionem proferentis exponunt, ficut regula juris, rem que est breviter enarrat : non tamen ita de. bet effe bre quin rationem & vim intentionis contineat. Et funt quadam Brevia formata sub suis casibus, & quadam de cursu qua consilio totius regni sunt approbata, quæ quidem mutari non poterunt absque eorundem contraria voluntate. Sunt & Brevia ex eis sequentia quæ dicuntur judicialia, & sæpius variantur fecundum varietatem placitorum proponent' & respondent', petentis & excipientis & secundum varietatem responsionum. Sunt & quadam qua dicuntur magi-Aralia & fapius variantur fecundum diversitatem casum, factoru & querelarum, & quorum quadam funt personalia, & quadam realia, & quadam mixta, secundum quod funt actiones diverfæ vel variæ, quia tot erunt formulæ brevium, quot sunt genera actionum, quia non potest quis fine brevi agere, pracipue de libero tenemento fuo, quia non tenetur quis respondere fine brevi, nisi gratis volucrit, & cum hoc fecerit quis, ex hoc ei non injuriabitur : volenti enim & scienti non fit injuria. De eadem autem re, plures alicui competere poterunt actiones, ordine autem, ut convenit, observato. Breve quidem regis in se nullam debet continere falsitatem, nec aliquem errorem : apparere debet vel in prima sui figura non vitiosum, maxime si fuerit patens sive apertum, quia originalia quadam funt clausa, & quadam aperta. Et sive aperta, sive clausa, apparere non debent abrasa, nee abolita: & si inveniatur abrasio, tunc refert quo loco, à quo, & quando. Quo loco? videlicet utrum in narratione facti vel juris. Si autem in narratione factiscader coram Justic' quasi suspectum. Facta enim & nomina mutari non debent, sed jura ubique scribi possunt. A quo? utrum videlicet per Clericum Cancellar' cui autoritas data fuerit, vel aufu temerario per alium, ficut Clericum Justic', vel Vic' ad procurationem alicujus partis : quo casu omnes agentes & consentientes tanquam falfarii puniantur. Item quando? videlicet utrum hoc fiat antequam bre in curia resuscitatum & publicatum, vel post. Si autem post, erit breve suspectum & eader, si à tenente suerit hoc calumpniatum. Fiunt autembrevia judicialia in Cancellaria ex recognitionibus & contractibus habitis & in Rotulis Cancellaria irrotulatis & ex recordo cancellario & Clericis sibi affociatis per hanc constitutionem concesso. Quia de hiis quæ recordata sunt coram Cancellar' domini regis, & ejus Justic' qui recordum habent & in rotulis corum irrotulantur, non debet fieri processus placiti per summonitionem, vel attachiament', elsonia, visus tre & alias solempnitates Cur' sicut sieri consuevit ex contractibus, & conventionibus factis extra curiam. Observandum est de carero quod ea qua inveniuntur irrotulata coram hiis qui recordum habent vel in finibus contenta, cum fint contractus five conventiones vel obligationes five servicia aut consuctudines recognize five alia quacung; irrotulata quib Cur' regis fine juris & conflictionis oftensa authoritatem præstare potest, talem de cetero habeat vigorem, quod non

fit necesse de hiis placitare in posterum, sed cum venerit querens ad curiam domini regis, si recens sit cognitio, vel finis, viz. infra annum per bre levatus, statim habeat bre de executione illius recognitionis facta: & si forte à majore tempore transacto facta suerit illa recognitio, vel finis levatus : pracipiatur Vic' quod scire fac parti de qua fit querimonia, quod fit ad certum diem, oftenf. fi quid sciat dicere quare hujus irrotulata vel in fine contenta executionem habere non debeant, Et fiad diem venerit, & hihil sciat dicere quare executio fieri non debear, pracipiatur Vic' quod rem irrotulatam vel in fine contentam exequi fac'. Eodem modo mandetur ordinario in suo casu, observato nihilominus quod inferius dicetur in flatuto de medio qui per judicium aut recognitionem est obligatus. Ex hac quidem constitutione oriuntur bria judicialia in Cancellaria sicut coram ipsis lustic. Ipfi autem collaterales & focii Cancellarii effe dicuntur præceptores, eo quod bria causis examinatis remedialia fieri pracipiunt, & hoc quoque cum fine denar'ad oous domini regis, & quoque fine fine, eo quod omnia bria non funt omni tempore aquipollentia. De brevibus autem coram Justic' ad primas Assisas cum in partes illas venerint, fines capere non consueverunt, eo quod ad tempus itineris Juftic', ligat constitutio Magna Carta qua talis est; Nulli justitiam negabimus, vendemus, vel differemus: fed non inhibetur quin fines capiantur pro brevibus poffessionum, & actionum personalium, pro celeriore Justitia habenda; qui quidem pro qualitatibus & quantitatibus portionem concessi in eisdem brevibus imbreviabuntur, & in rotulis Cancellaria irrotulantur. Qui quidem rotuli fingulis annis ad Scaccar' liberabuntur, & fines hujus extrahantur & per summon' Scaccarii leventur. Clausula vero finis talis est, Et cape securitatem à prafato tali de 40 solid, ad ons nostrum pro hoc brevi. Verba autem extract' de Scaccario sunt hæc. De A. de B. pro brevi habend', dim' marc' vel amplius prout finis factus fuerit. Conceduntur aliquando conquerentib" ob favore paupertatis quod ubi præsumi potest sie quod plegios invenire non possunt de prosequend' clamore suum quod securitatem praftent Vic' per fidei interpolitionem suam, non tamen in actionibus personalibus hoe concedendum est. Habet & Rex Clericos in officio illo expertos & legales qui formulas breviu cognoscunt, qui approbanda admittunt & desectiva omnino repellunt, quib' omnia bria prinfquam ad figillu proveniunt cum deliberatione difincte & aperte in ratione, dictione, litera & syllaba examinare injunctum est. Et sciendum quod nullum bre nisi per manus eorundem ad sigillum debet admitti. Habet etiam fex Clericos suos pranotarios in officio illo, qui cum Clericis memoratis familiares, &c. esse consueverunt & præcipue ad victum & vestitum qui ad bfiascribenda secundum diversitates querelarum funt intitulati. Et qui omnes pro vidu & vestitu de proficuo sigilli in cujuscunque usus pervenerit debent honefle inveniri. Sunt etiam nihilominus Clerici juvenes & pedites quibus de gratia Cancellar' concessum est pro expeditione populi bria facere cursoria, dum camen sub advocatione Clericorum superiorum fuerint qui eorum facta in eorum receperint pericula. Et in quolibet bri debet scribentis nomen inbreviari qui warrantizare poterint in peccatores si necesse suerit. Et ne præfati Clerici superflua petant stipendia pro scriptura sua, constitutum est quod tam Clerici Iustic' quam' Cancellar' de solo denario pro scriptura unius brevis seteneant contentos.

And this Court is the rather alwayes open, for that if a man be wrongfully imprisoned in the Macation, the Nord Chancelour may grant a Habeas corpus and do him justice according to law, where neither the Kings Bench nor Common Pleas can grant that Aritbut in the Aerm time; but this Court may grant it either in Aerm time or vacation. So likewise this Court may grant Prohibitions at any time either in Aerme or Macation: which Arits of Prohibition are not retornable: but if they be not obeyed, then may this Court grant an Attachment upon the prohibition retornable either in the Kings Bench

0; Common Place.

* The Author of that Book speaking of the Court of Chancery, and of the jurisdiction it then had, saith, Curia Cancellariæ Regiæ est curia ordinaria pro brevibus originalibus emanandis, sed non placitis communibus tenendis.

Divers Ads of Parliament give authority to the Lord Chancelour to heare E.3.

New Tales, or Novæ Narrationes, written about the beginning of E. 2. 27 E.3.cap.13. 2 R.3.fo.3. 13 E.4. Dier 12 El.288. a. refolve.

Ministers of this Court, See the 2. part of the Inst. W. 2. ca. 24. Verb. Clerici de Cancellaria. * In the Parliament Rol of 5 R. 2. nu. 23. they are called chief Clerks.

Of the Antiquity of this Court of Equitr.

Henry Beaufort fon of John of Gaunt Bishop of Winch, Cardinal of St Euschius, Lord Chancelor in the beginning of the reign of H.6. and in that Kings reign John Kemp Cardinall of S. Rufeline Archbishop of York, Lord Chancelor. See Rot. Parl. 28 H.6.nu.10. & 35 H.6.fo.3. a 36 E.3.cap 9.

Rot. Par. 13 R.2.

17 R. z.ca.6.

t determine divers offences and causes in the Tourt of Chancery, which is ever intended in this Court proceeding in Latin, secundum legem & consumulinem Anglix, and the Desendant shall not be swoon to his answer, not examined upon Interrogatories, and upon issue joyned it shall be tried in the kings Bench, the insimilibus casibus soler. But our purpose is not to enumerate all these statutes, for our aim is principally at the generall surtediation of this Court.

The Officers and Pinisters of this Court of Common law doe principally attend and doe their service to the Great Seal, as the *tivelve Pasters of the Chancery, whereof the Paster of the Rols is the chief, who by their original institution, as it is proved before, should be expert in the Common law, to see the soming and framing of original writs according to law, which are not of course; whereupon such are called in our ancient Authors Brevia Magistralia. The Clerk of the Crown, the Clerk of the Pamper, the Sealer, the Chase war, the Controller of the Chancery, twenty sour Cursicors sor making writs of course or somed writs according to the Register of the Chancery, the Clerk of the presentations, the Clerk of the faculties, the Clerk examiner of Letters Patents, the Clerks of the Petitibag, and the six Atturnies. The process in this Course is under the Great Seal according to the course of the Common lain.

Having spoken of the Court of ordinary jurisdiction, it followeth according to our former division, that we speak of the extraordinary proceeding according to the rule of equity, secundum equum & bonum, wherein we will purfue our former order.

Albeit our ancient Authors, the Mirror, Glanvill, Bracon, Britton and Fleta, doe treat of the former Court in Chancery, and of originall writs and Commillions illuing out of the same, yet none of them do once mention this Tourt of Equity. The have also considered what cases in this Court of Equity have been reported in our books, and we find none before the reign of H.s., and in that kings time, and afterwards plentifully, we then turned our cies to Acts of Parliaments and Parliament Rols.

a Some have thought that the statute of 36 E.3. gave the Thancelor his first authority for his proceeding in course of equity, by which it is enaced, that if any man think himself grieved contrary to any of the Articles above written, or others contained in divers statutes, will come to the Chancery or any for him, and thereof make his complaint, he shall presently have there remedy by force of the said Articles and statutes, without elsewhere pursuing to have remedy. But certainly this Ast givest the Thancelor no power to proceed in course of equity, but that he grant to the party grieved originall writs which are called remediall grounded upon any statute to; his relief, and there is no statute that gives the party grieved remedy in equity. Lastly, the last words of the Ast, without elsewhere pursuing to have remedy, doe manifest that the meaning of the makers of the Ast is to direct the party to be relieved by the Tommon last, by actions upon these statutes, and not elsewhere.

In the Parliament holden 13 R. 2. the Tommons petitioned to the Ling, That neither the Chancelor nor other Counsellor doe make any order against the Common law, nor that any Judgment be given without due processe of law. Whereunto the Lings answer was, The usages heretofore shall stand, so as the Kings royalty be saved. In the same Parliament another petition was, That no person should appear upon a writ Dequibus dam certis de causis, before the Chancelor or any other of the Councell, where recovery is therefore given by the Common law: Whereunto the Lings answer is, The King willeth as his Progenitors have done, saving his regalty.

In the Parliament holden in 17R. 2. It is enauted at petition of the Commons, That forafmuch as people was compelled to come before the Kings Councell, or in Chancery, by writs grounded upon untrue suggestions, that the Chancelor for the time being presently after that such suggestions be duly found and proved untrue, shall have power to ordain and award dammages according to

his discretion to him which is so travelled unduly, as is aforesaid. This Attertendeth to the Chancelos proceeding in course of equity, and extendeth not to a Demurrer in law upon a bill, but upon hearing of the cause upon these words in the 7 E. 4.60.14. Ad duly found and proved and this is the first Parliament that I find touching this matter. And in the Roll of the fame Parliament, I finde the first becree in Chancery that ever 3 observed, the effect whereof was: John de Windsor com: Rot. Par. 17 R 2. plaineth and requireth to be reftozed to the Mannogs of Rampton, Cottenham and Westwick with their appurtenances in the County of Cambaioge, the which were adjudged to him by the Kings award, then in the possession of Sir John Lifley, and now withholden by Sir Richard le Scrope, who by Champerty bought the same : the cause was this. Upon a petition of Windsor against Lidey, they both compromitted the matter to the lings order, the ling committed the fame to the Councell, they after digetting of the fame made a becree for Windfor under the Privy Seal, they fend warrant to the Chanceloz to confirm the same, which was done under the Great Seal by a special Injunction to Lisley, s to write to the Sherif to execute the fame. After this, Lifley by petition to the Ling requireth that the fame may be Determined at the Common law, not with: Canding any former matter: the King accordingly by Pathy Seal gibeth warrant to the Chancelog to make a Superfedeas, the which was done by Datop Seal, after which Sir Kichard Lescrope bought the same. Upon the ripping of the whole matter, this fale was thought no Champerty, whereupon it was adjudg = Champerty. ed, that the faid Windfor thould take nothing by his faid fuit, but to frand to the Common law, and that the faid Sir Richard Gould goe without dap.

The Commons petitioned that no Wirits of Party Seals be fued out of Rot. Par. 1 H. 4. the Chancery, Erchequer of other places to any man to appear at a day upon a nu.69. pain, either before the Ling and his Councell, or in any other place, contrary to the ordinary course of the Common law : whereuntothe Bing answered: That

fuch writs should not be granted without necessity.

Amonast the petitions of the Commons pon shall find this, That all write of Ros. Par. 3 H. 5. Subpoena and Cercis de causis, going outfof the Chancerp and the Erchequer map be enrolled, and not granted of matters beterminable at the Common law, on pain that the Plaintif doe pay by way of debt to the Defendant forty pound:

whereunto is answered, The King will be advised.

It is enaced, to endure untill the nert Parliament, that the erception (how that the party hath fufficient remedy at the Common law that discharge any matter in Chancery. At the next Parliament you that find a petition in thele words. No man to be called by Briby Seal or Subporna to answer any matters but fuch as have no remedy by the Common taw, and that to appear soby the testimony of two Instices of either Bench, and by Indenture between them and the Plaintif, which Plaintif thall always appear in proper person, and find furety by recognizance to profecute with effect the matters of the Bill only, and to answer dammages if the same fall out against the Plaintif.

But in anno 15 H.6. for a perpetuall law, and for the true jurisdiction of

this Court it is enacted in these words,

Item, foralmuch as divers persons have before this time been great + 39 H.6. fo 26. ly grieved by Writs of Subpana, purchased for matters determinable by the Common law of his land, to the great dammage of such perlons fo vexed, in subversion, and impediment of the Common law 6E.4. 10 b. aforesaid: Our Soveraign Lord the King will, that the statutes therof made shall be kept after the form and effect of the same. And that Rot. Par. 14 E.4. no Writ of Subpana be granted from henceforth till furety be found nu.s. William to satisfie the party so grieved and vexed for his dammages and expences, if so be that the matter may not be made good, which is cap. 18.24.50. contained in the bill. In anno 31 H. 6. cap. 2. There is a provito in 31 H.6.ca.s. these words. Provided that no matter determinable by the law of this

nu.10. William Courtney fon of Hugh Earlof Devon, was then Billiop of Cant. and Lo. Chancelor when this decice was made,

Edmond Stafford Archb. of York, was Lord Chancelor at. this time. Kot. Par. o H. c. nu. 25. Rot.Par. 1 H.6. nu.41.

Never good Petition in Paliament dieth but first or last will rake etti &. Vid. (up. pa . 32. 15 H.6.ca.4.

4 E.4.8.14 E.4.1. 16 E.4.9.b. 18 E.4.13. 7 H.7.12. Fortefc.ca.34. Therford ca e Doct. & Stud.

Trin. 2 Jac.

Pasch 29 El.in. Scaccario Woods case. Vide 7 El. Dier 238. Seignior Shandois case. Reasons, v. à majori ad minus. Rot. Par. 2 R.1. nu. 18.

nu.10. 2 Regula. 3.

Rot.Par.13 R. 2.

37 H.6.14. 27 H.8.18.

Trin.3 Jac. Reg. in Scaccario. Sir Thomas Themilthorps case.

Wallers cafe.

The Indge of this Court of Equity, &c.

Realm shall be by the said Act determined in other form then after the course of the same law in the Kings Courts having determination of the same law.

Tr. 2 Jac. Regis, upon suit made to the king so erecting of a new office so, taking of surety according to the said Act of 15 H. 6. cap. 4. the king referred the cause to Popham Chief Instice, who upon conserence with the Indges in Fleetstreet, resolved that the surety was by socce of that Act to be by obligation, and to be made by the party grieved himself, because it concerneth his dammages and costs, and the Court was to set down the soum and sum of the obligation, and in the end the suit prevailed not.

Paich. 29 Eliz, in Scaccario, In Woods case adjudged upon the statute of 2 E.6. cap. 13. for the like reason that the sortesture so, non-payment of titles shall not to the party grieved.

1. Rot. Par. 2 R. 2, nu. 1 8. The high Court of Parliament relieveth but luch as

cannot have remedy but in Parliament.

The Parliament fo: matters determinable at the Common law doth remit

the parties thereunto.
2. Nunquam decurritur ad extraordinarium, fed ubi deficit ordinarium.

3. Tabereas matters of fact by the Common law are triable by a Jury of twelve men, this Court should draw the matter ad aliud examen, that is, to judge upon deposition of witnesses, which should be but evidence to a Jury in actions reall, personall, or mirt.

This Court of Equity proceeding by English Bill is no Court of Record, and therefore it can bind but the person only, and neither the state of the Defen.

Dants lands, nor property of his goods or chattels.

Egerton Lord Chancelour imposed a fine upon Sir Tho. Themilehorp linight, for not performing his decree in Chancery concerning Lands of inheritance, estreated the same into the Crchequer: and upon processe the party appearing pleaded that the sine was imposed by the Lord Chancelor for not performance of his decree, and that he had no power to assess the same. The Atturny Senerall consessed the plea to be true, & petite advisamentum curiar, concerning the power of the Chancelor in this case, and upon debate of the question in Court, and good advisement taken, it was adjudged that the Lord Chancelor had no power to assess any such sine, for then by a mean he might bind the interest of the land where he had no power, but of the person only, and thereupon the said Str Thomas Themilehorp was discharged of the said fine.

Afterward the faid Load Chanceloa decreed against Waller certain lands, and for not performance of the decree imposed a fine upon him, and upon process out of the Court of Chancery extended the lands that Waller had in Hidd, to whereupon Waller brought his Assis in the Court of Common pleas, where the opinion of the whole Court agreed in omnibus, with the Court of Exchequer.

The Lord Thancelor or the Lord Reeper is sole Judge both in this Court of Equity, and in the Court concerning the Common law; but in cases of weight or difficulty he both assist himself with some of the Judges of the Realm, and no greater exception can be taken hereunto then in case of the Lord Steward of England being sole Judge in trials of the Poblisty, who also is assisted with some of the Judges.

For this Court of Equity the ancient rule is good. Three things are to be judged in Court of Conscience: Covin, Accident, and breach of confidence.

All covins, frauds, and deceits, for the which is no remedy by the ordinary course of lain

Accident, As when a fervant of an Obligoz, Pozgageoz, te, is fent to pay the mony on the day, and he is robbed, te, remedy is to be had in this Tourt against the forfeiture, and so in the like.

The third is breach of trust and confidence, whereof you have plentiful arthorities in our books,

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The case in the Chancery between the Carl of Morceffer and other Plains Mich 41 & 42 tifs, and Sir Moyl Finch and Eliz, his wife Defendants was this. The Ducen Elin Cancellar. being feised of the Hanno; of Raveston and of certain lands in Stokegolding: ton, (which the Plaintif pretended to be a Mannoz either in right or reputation) granted by her Letters Patents the Mannoss of Ravelton and Stokegolding: ton to the faid Sir Moyl, and John Awdelye, and their heirs: but this was upon: confidence, that they thould grant the Panno; of Rabelton to Sir Thomas Heneage and Anne his wife , and to the heirs of Anne : and the Mannos of Stokegoldington to Sir Thomas and Anne, and the heirs of Sir Thomas. bir Moyle and Awdelye by deed indented and inrolled Termino Trin. 1588. 30 Eliz, in this Court for a thousand pound bargained and fold to Sir Thomas Henage and his wife the Mannoss of Rabelton and Stokegoldington, and the beite of the Priory of Ravelton in the County of Buck. and all other their lands, tenements and hereditaments in Ravenffon, Weffon, Pedington, and Stokegoldington in the County of Buck. To have and to hold the Mannoz of Ravenston and the Scite of the faid Priory, and all the premises in Ravenston, Weston, Pedington, and Stokegoldington (other then the said Mannoz of Stokegoldington) to the faid Sir Thomas and Dame Anne, and the heirs of the faid Dame Anne : and to have and to hold the faid Pannoz of Stoken. to the faid Sir Thomas and Dame Anne, and to the heirs of Sir Thomas. Sir Thomas had titue by the faid Dame Anne the faid Elizabeth one of the Defenbents his only child, and afterwards the faid Dame Anne died : the Defendant alleadged that Sir Thomas was diffeiled of Stokegoldington, and the Plaintif Denied it. And after Sir Thomas by deed indented and inrolled, bar: gained and fold the Mannoz of Stokegoldington to the Plaintif for papment of his debts and died: and for payment of his debts, they erhibited their bill against Sir Moyl, and the faid Eliz. his wife, for the faid Pannor of Stokegol. dington, and the Lord Thancelor decreed it for the Plaintif. And upon a petition preferred by the Defendants to Ducen Elizabeth, the referred the confideration of the whole case to all the Judges of England: and after hearing of the comfell of both parts on feverall days, and conference between themselves, these points for rules in equity were refolved. First, that if there were any diffetion, A Diffeifor fulthat nothing passed to the Plaintif either in right or equity, for the diseiler was jed to no trust, subject to no truft, not any Subpana was maintainable against him, not only becante he was in the post, but because the right of inheritance or freehold was determinable at the Common law and not in the Chancerp, neither had Ceffi que use (while he had his being) any remedy in that case. Secondly, it was resolved by all the Juffices, that admitting that Sir Thomas Heneage had a truft, pet A truft cannot be tould not be affign the fame over to the Plaintif, because it was a matter in pais affigned over, bity between them, and was in nature of a chose in action for he had no power 22 El. Dier fe. of the land, but only to feek remedy by Subparna, and not like to cetti que ulesto; 369. pl. 50. thereof there hould be possession fratris, and he hould be sworn on Juries in respect of the use, and he had power over the land by the tatute of 1 R. 2. cap. and if a bare trust and confidence might be assigned over great inconvenience might thereof follow by granting of the same to great men, tc. Thirdly, suben the land descended to Elizabeth one of the Defendants, as beir to her mother, and the trust descended to her from her sether, the trust was drowned and ertinguifhed. Fourthly, when any title of freehold or other matter Determinable Matters deterby the Common law come incidently in question in this Court, the same cannot minable by the be decided in Chancery, but ought to be referred to the triall of the Common law Common law where the party griebed may be relieved by erroz, attaint, oz by action of higher ded in Chancery. nature. And when the fuit is fo; evidences, the certainty whereof the Plaintif Suit for Evidece. furmifeth he knoweth not, and without them he supposeth that he cannot sue at the Common law: It was refolbed that if the Defendant make no title to the land, then the Court bath just jurisdiction to proceed for the evidence; but if he make title to the land by his answer, then the Plaintif ought not to proceed, for otherwife by fuch a furmife, inheritances, frecholds, and matters beterminable

Sir Moyl Finches

cannot be deci-

tie

by the Common law thall be decided in Chancery in this Court of Equity. And thus were these points resolved by Sir John Popham, Sir Edmond Anderfon Str VVilliam Periam, and VValmellye, Gawdye, Fenner, and Kingefmill 30, ffices and Clark and Savill Barons of the Erchequer , and all this among to ther things they certified under their hands into the Chancery, and thereupon the former decree was reverled. And in debating of this cafe it was refolved by the tivo Chief Juftices, Thist Baron, and Dibers other Juftices, that if a man make a conveyance, and erprelle an ufe, the party himfelf or his heirs thall not be receive bed to aberrea fecret truft, other then the expresse limitation of the use, unless fuch trust or confidence doe appear in writing, or otherwise declared by some apparent matter. And Popham fait, that cobin, accident, and breach of confidence were within the proper jurisdiction of this Court.

Mich.39 & 43 El. in Cancellar'.

Thomas Throckmorton Efquire exhibited a bill in this Court against bir Moyl Finch Entight, claiming a leafe of the mannogs of R. and S. for mann pears to come, and thew clear matter in equity to be relieved against a fortei ture pretended by Sir Moyle for breach of a condition where there was no be fault in the Plaintifice. Anto which bill the Defendant pleaded this plea, that for the triall of the forfeiture of which leafe, he made a leafe for years to one priviledged in the Erchequer, who brought an Ejectione firme against the Plain. tif, and upon pleading a demurrer in law, the Leffee had judgment to recover against Thomas Throckmorton (now Plaintif in Chancery:) wherupon Thomas Throckmorton brought a wait of error in the Erchequer Chamber, where upon due proceeding the judgment was affirmed, and demanded judgment, it after their fudgments given at the Common law he ought to be drawn to make any further answer in this Court of Equity. And Egerton Load Chancelog Delibered his opinion in Court, that the Defendant thould answer to the bill: And forasmuch as the cale was of great confequence, the confideration of the demurrer was by the Ausen referred to all the Judges of England : before whom the Councell of Throckmorton faid, that the intent of the Lord Chanceler was not to impeach the faid judgments, but confessing the faid judgments, to be relieved upon matter in equity: As if a man bath (as be is adviced) two matters to aid him. matter at the Commontato, and matter in equity, and being impleaded at the Common law, both by abbice of his councell affay the Common law, where his adversary prevaileth against him, and bath judgment accordingly, get in this case the party may, confesting the judgment, sue to be relieved upon a collate rall matter in equity: and thereupon they thewed some presidents in time of H.S. E.6. &c. and one in the point between Ward and Fulwood. But upon great de liberation it was resolved by all the Judges of England, that the plea of Sir Moyl Finch was good, and that the Lord Thancelor ought not to examine the matter in equity after the judgment at the Common law: for though the Lord Chanceloz (as hath been faid) would not examine the judgment, pet be would by his decree take away the effect of the judgment: and for the prelidents, they were grounded upon the fole opinion of the Lord Thancelor, and passed sub filentio. But that fach a course thould be permitted, it thould be not only full of inconvenience, but directly against the laws and statutes of the Realm, against which no president or prescription can prevail; * which you may read at large in the Third part of the Inflitutes, cap. Premunire. Which resolution of the Judge es was lignified by Popham Chief Justice to the Lord Chancelor, and thereup on no further proceeding was against Sir Moyle Finch, but his plea Good.

In a case depending in Chancery by English bill between Mears Plaintis and Saint-John and his wife Administratrix of John Alnion Defendant, the cale was this: That the Intestate took the profits of the lands of the Waintif being within age by force of a trust reposed in him by the father of the Plain tif by his last Will, the yearly value of which lands was fourscoze pounds per annu, and the Intestate took the profits from the 23 year of Queen El. untill the 33 year of her reign, and with parcell of the profits purchased lands in see which descended to his heir, and left affets to his Administratrix one of the Defen. dants

in the preamble. Doct. & Stud. 30. W.2.c2.5. vid. Pasch.5 E.4. Coram rege Rot. Norres cafe. Nota.

27 E.z.cap.1.

4 H.4.cap. 22.&c.

Mich.37 & 38 El, in Cancellar'. And

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rants to latisfie the plaintif, all debts paid. The question was, whether in this case the Administratrix might not be charged in equity for the faid mean profits: And bit Thomas Egerton mafter of the Role faid, that he had feen a cafe in Chantery in Anno 34 H. 6. resolved by all the Judges of England remaining in the Tower, that where the Feoffees to use took the profits of the land, and rewived the rents, and made their Crecutors, and died leaving affets to fatisfie all debts over and above the faid rents and profits, that the Grecutors fould be tharged to latisfie cesti que use to; the faid rents and profits, and accorningly it was decreed in Mears case against the Defendant : but whether the heir thould be contributory or no, it it was doubted.

Withams case in the Chancery was, that a tearm for years was granted to the use of a seme sole, the took husband and died, whether the husband should have the use, or the Administrators of the feme, was referred to the Judges; and by them it was refolved, that the Administrators should have it, and not the husband, because that this trust of a seme was a thing in privity, and in & 18 E.4.11. nature of an action, for twhich no remedy was but by writ of Subsecua. And hit was refolved by the Justices in VV aterhouses case, Hil. 8 Eliz. Eborum, for the truft runneth in privity in this case, and a husband thould not be tenant by the curtefic of an use, not the Lord of the Willain Could have it at the

Common laip.

A man polleffed of a tearm for years in lands, by his last Will devised the fame to one and the heirs of his body begotten, made his Grecutors and died, the Device entreth by the affent of the Crecutors, bath iffue and alien the tearm and dieth: this alienation barreth the iffue, for a tearm for years cannot be entapled. And afterwards Anno 31 Eliz. in a case depending in Chancery between Higgins and Milles it was certified by the Lord Anderson and Buffice VValmfley (to whom it was referred) that no estate tail could be of a tearm, and that the alienation of the Devilee did bar the iffue.

In a Premunice between John Perror Plaintif, and T. M. H.W. and others Defendants, it was refolded by Sir Christopher Wray Chief Justice, and the court of Kings Bench, that the Queen could not raise a Court of Equity by her Letters Patents, and that there could be no Court of Equity but by Ac of parliament, or by prescription time out of mind of man. But the Dueen might grant power tenere placita, or conusans de plea, for all must judge acwiding to one ordinary rule of the Common law, but otherwise it is of proceedings extraoedinary without any certain rule.

These cases which upon so great and mature deliberation have been resolbed by the Audges of the Realm, and whereunto we were privy and well acquainted with, we have thought good to report, and publiff for the better directi-

on in like cases hereafter.

he is made Lord Thancelor of England, or Lord Reeper of the Great Seal, pertraditionem magni figilli fibi per dominum regem, and by taking his oath. Forma Cancellarium constituendi regnante Henrico secundo fuit appendendo magnum Angliæ figillum ad collum Cancellarii electi.

Some have gotten it by Letters Patents, at will, and one for tearm of his life; but it was holden void, because an ancient office must be granted, as it

bath been accustomed.

c It is enacted and declared, that the Common law of this Realm is and always was, and ought to be taken, that the Keeper of the Great seal of England for the time being hath always had, used, and executed, and from thenceforth may have, take, use, and execute the fame and the like place, authority, preheminence, jurisdiction, execution of laws, &c. as the Lord Chancelor of England for the time being lawfully used, &c. And so it appeareth in 18 E.3. nu. 41. that the Lord Rot. Par. 18 E.3. Chancelog, of Logo Beeper for the time being ought to have conulance.

Pafch. 32 El. in Cancellaria. Fborum. Vide 7 E.4.14.

Trin. 28 El.adjudge in the Kings Bench, in Peacocks cale.

31 Eliz.between Higgins and Mils in Cancellaria.

Mic. 26. & 27 El. Coram Rege. Perots cafe. 10 H.6.15. in London by prefeription. Nota this refolution is against the Court of Requefts, Seehere after, cap. 9.

W How he is created, Cainden p. 131.

4 35 H.6.3. B. of Winch, 1 H.6. nu.16. b CardinalWoolfey. c 5 El.ca, 18,

DU.41.

a Rot. Par. 1 H.6 nu.13,14. 13 R. 2 nu 7. Vide Camden ubi fupra. b Stat. de forma mittendiextradt. in Scaccarium, Anno 16 E. r. vet. Mag. Carta, 2 part. fo . 47.b. c An. 27 E. 1. de libertatibus perquirendis. Ver. Mag. Carta, part. 1. fo. 126, & 2 part fo.57, &c.

* I finde that King H. 5. had two Great Seals, one of gold, which he delivered to the Bishop of Duresme, and made him Lord Chancelour of England, and another of silver, which king Henry the 5 delivered to the Bishop of London to keep.

b William de Ayremin Garden des Rolles del Chancelar' & fes compagnions gardens del Grand Seale. At this time was Robert Burnel Bithop of Bath and

Wels Chancelour of England.

colour and of his Lieutenant, it must of necessity be intended of such a Lieutenant, as the law both allow of, and that cannot be of a Deputy, for the Chancelour cannot make a Deputy; but Locum repens is to be taken for one that holdeth the place, or hath equal authoritie of the Chancelour, and that is Custos Magni Sigilli: and this agreeth with the judgement of the sate Parliament in 5 Eliz. But all questions are now taken away by the sate Act of 5 Eliz. and at this day there being but one Great Seale, there cannot be both a Lord Chancelour and a Lord Theorems of the Great Seale at one time, because both these are but one Office, as it is declared by the sate Act.

¶ Cancellarius unde.

6 E.4.9. Dier 3 Eliz 137. 2 E. 3. 7. 17 E. 3. 59. 21 E. 3.47.

Lib. 2 fo. 14. &c.

It is faid before, that the Chancelour by his ordinary power may hold please Scire fac' to repeale the Kings Letters Patents under the Breat Seal being alwayes inrolled in this Court, which we (to make a true derivation of his name) thall now particularly touch. This Warit of Scire fac' to repeal Letters patents both lipe in this ordinary course of Justice in three cases. The first, when the Bing by his Letters patents both grant by feverall Letters patents one and the felf same thing to severall persons, the former Patentee hall have a Scire fac'to repeal the second patent. Secondly, when the King granteth any thing that is grantable upon a falle fuggettion, the King by his prerogative Jure Regio map have a Scire fac' to repeal his own grant. Thirdly, when the Bing both grant ang thing, which by law he cannot grant, he Jure Regio (for advancement of in Atice and right) may have a Scire fac' to repeal his own Letters patents. Aou the Judgement in all these three cases is, Quod prædicta littera patentes dicti do mini Regis revocentur-cancellentur, evacuentur, adpullentur, & vacua, & invalida, pro nullo penitus habeantur, & teneantur; ac etiam quod irrotulamentum eorundem cancelletur, cassetur, & adnihiletur, &c. Hereof our Lord Chancelour of England (for forein Chancelours, it may be, have not like authority) is called Cancellarius, à cancellando, i, à digniori parte, being the highest point of his furifolition to cancell the Bings Letters patents under the Great Seale, and damming the incolment thereof, by drawing Arikes through it like a Lettice.

And all this which hath been fait concerning the office of the Lord Thanks lour, or Lord Reeper is included within his a Dath, which followeth in their

words, and confifteth upon fir parts. He thall fweare,

1. That well and truly he chall ferbe our Soveraigne Lord the Ling and his b people in the office of Chancelour (or Lord Leeper.)

2. That he thall doe right to all manner of people, poore and rich, after the c laives and ulages of the Realm.

3. That he thall truly counfell the King, and his counfell he thall d layne and keep.

4. That he thall not know nor fuffer the hurt or ditheriting of the King, or e that the rights of the Crowne be decreased by any meanes as far as he may let it.

5. And if he may not let it, he thall make it clearly and exprelly to be known to the laing, with his true advice and counfell.

6. And that he thall do and purchase the Kings profit in all that he reasonably may. As God him help, and by the Contents of this Book.

The Lord Chancelours Oath,

a Rot. Par. 10 R.2 Rot.8. the Oath recited. Vid. Rat. Parl. 11 H.4.1.nu. 28. b Because he hath power of judicature, as is aforelaid. € 10 K. 2. Rot. Par. nu.8. 2 H.4 nu.10. 15 E.3. nu. 10. 15.37.41.42. d Laine is an ancient French

werd, and fignifieth to hide. e Rot. Parl. 10. R. 2. nu. 6,7,8. &c. the case of Mich. de la Pole Chancelour of England. ite:

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Articles against Cardinall Woolsey.

pow for as much as the Articles erhibited to hing H. S. I die Decembris Anno 21 of his reign, by the Lords and others of his Pathy Councell (whereof Vid. Artic. 20, bir Thomas More Load Chancelour was one) and by two of the principall 21,26.38,41,12, Judges of the Realm against Cardinall Woolley, do in divers of the Articles 41.46. concern the jurisdiction of the Chancery, (viz. the 20 and 26 Articles, 4c.) and other titles of this fourth part of the Inflitutes, we have thought good juffly and truly to transcribe from the very Datginall, under the proper hands of the Lords and others of the Paivy Councell, and of the faid Judges, (which we have feen and had in our cultody) and have compared this Transcript with the Difficiall it felfe, and have (because they are of great weight and use to many purposes) transcribed it de verbo in verbum, without omission of any thing, as matters ofthat nature ought to be : and the rather, for that in our Thronicles they are perp untruly rehearled : and before this time (that the finde) the true Articles were never printed.

Confirained by necessity of our fidelity and conscience, complaine and shew to your most Royall Majesty, we your Graces humble, true, faithfull, and obedient subjects : That the Lord Cardinall of York, lately your Graces Chancelour, presuming to take upon him the authority of the Popes Legat De latere, hath by divers and many fundry wayes and fashions committed high and notable grievous offences, miluling, altering, and subverting the order of your Graces laws: and otherwise contrary to your High Honour, Prerogative, Crown, Estate, and Dignity regall, to the inestimable great hinderance, diminution, and decay of the univerfall wealth of this your Graces Realm, And it is touched fummarily and particularly in certain Articles here following, which be but a few in comparison of all his enormities, excesses, and transgressions committed against your

That is to fap: Graces lawes.

1. First, where your Brace & Poble Progenitors within this your Realm of The foversignty, England, being kings of England, have been to free, that they have had in all the world none other Soveraigne, but immediate subject to Almighip God in all things touching the regaly of your Trolon of England, and the same preeminence, prerogative, jurifoidion, lawfull and peaceable postesion your Grace and pour noble Pagogenitors have had, used, and enjoyed, without interruption or kulinelle therefore by the space of 200 years and more: whereby your Grace map prescribe against the Popes Polinese, that he should not, nor ought to fend prescribe, of make any Legat, to erecute any authority Legatine contrary to your Graces pierogative within this your Realme. Now the Lord Cardinal of Pork be- Cardinal of Yo.k ing your subject and naturall liege borne, bath of his high, orgallous, and infatiable minde, for his own fingular advancement and profit, in derogation, and to the great inflemishment and burt of your faid regall jurifoidion and prerogative, and the long continuance of the polletion of the fame, hath obtained autho- Authority Lerity Legatine: by reason whereof he hath not only hurt your said prescription, garine. but also by the said authority Legatine, hath sported and taken away from many houses of Religion within this your Realm much substance of their goods. And also hath usurped upon all your Dadinaries within this your Realme much Ordinaries. part of their jurisdiction, in derogation of your prerogative, and to the great hurt of your faid Dedinaries, Prelates, and Religious.

2. Also the said Lord Cardinall being pour Ambassadour in France, made a Ambassadour. treaty with the French king for the Pope, your Majelly not knowing any part thereof, noz named in the same; and binding the said French king to abide his order and award of any controversie or doubt should arise upon the same, betwirt

the faid Pope and the French Ling.

3. Also the said Lord Cardinall being your Amlassadour in France, sent a Commission to Sir Gregory de Cassalis under pour Ozent Seale in your Ozaces name, to conclude a treaty of Amity with the Duke of Ferrare, without any commandment

prerogative, regall jurifdiction, and freedome of the Crowne of England.

Spoyled many houses of religion Ulurped upon

Ambaffadour.

The King and I.

commandment of Warrant of your Dighnette, not your faid Dighnette adverti-

fed or made priby to the fame.

4. Also the said Lozd Cardinall, of his presumptuous minde, in divers and many of his Letters and instructions sent out of this Realm to outward parts, had somed himself with your Grace, as in saying and writing, The King and I would ye should do thus. The King and I do give unto you our hearry thankes, Whereby it is apparent that he used himself more like a sellow to your Highnes, then like a subject.

5. Also, where it hath ever been accustomed within this Realm, that when Poble Den do sweare their boushold servants, the first part of their outh hath been, that they should be true liege men to the King and his Peirs Kings of England: The same Lord Cardinall caused his servants to be only sweament

him, as if there had been no Soberaign above him.

6. And also whereas your Grace is our Soveraign Lord and Pead, in whom standeth all the surety and wealth of this Realm; the same Lord Cardinall knowing himself to have the soule a contagious disease of the Great Pocks broken out upon him in divers places of his body, came daily to your Grace, rowning in your care, and blowing upon your most Poble Grace with his perilous and inscative breath, to the marvellous danger of your Pighnesse, if God of his infinite goodnesse had not better provided for your Pighnesse. And when he was once healed of them, he made your Grace to believe, that his disease was an Ampostume in his head, and of none other thing.

7. Also the said Load Cardinall by his authority Legatine, hath given by prevention the Benefices of divers persons, as well Spirituall as Temporall, contrary to your Crown and dignity, and your Lawes and Statutes therefore provided: by reason whereof he is in danger to your Grace of sorteiture of his

lands and goods, and his body at your pleafure,

8. Also the said Lord Cardinall taking upon him otherwise then a true Comfedour ought to do, hath used to have all Ambassadours to come first to him alone, and so hearing their charges and intents, it is to be thought he hath instruced them after his pleasure and purpose before that they came to your presence, contrary to your High commandment by your Braces mouth to him given: and also

to to other persons sent to him by your Brace.

9. Also the said Lozd Cardinall hath practice so, that all manner Letters sent from beyond the sea to your Highnesse, have comen first to his hands, contrary to your high commandment by your own mouth and also by others sent to him by your Drace: by reason whereos, your Highnesse nor any of your Councell had knowledge of more matters but of such as it pleased him to thew them; whereby your Highnesse and your Councell have been compelled of very sorte to sollow his devices, which oftentimes were set forth by him under such crasty and covert meanings, that your Highnesse and your Councell have often times been abused: insomuch that when your Councell have sound and put divers doubts and things which afterward have ensued, he to abuse them used these words, I will lay my head that no such thing shall happen.

10. Also the said Lord Cardinall hath practice, that no manner person having charge to make espiall of things done beyond the sea, should at their returns come first to rour Drace, nor to any other of your Councell, but only to himself: and in case they did the contrary, he punished them sor their so boing.

11. Also the said Lord Cardinall hath granted licenses under your Great Seal, sor carping out of Grain and other Aiduals after the restraint both been made thereof, sor his own lucre and singular advantage of him and his servants sor to send thither as he bare secret savout, without your Graces Charrant or knowledge thereof.

12. Also the said Lord Cardinall used many years together not only to write unto all your Ambassadours resident with other Princes in his own name, all advertisements concerning your Graces affairs being in their charge, and in the same his Letters wrote many things of his own mind without your Graces pleasure

Oath.

Great Pocks.

Provision. Premunire.

Counselour. Forein Ambassadors.

Letters fent from beyond fea. First to him.

Councell.

Forein intelligence to him, &c.

Licenfesto tranfport grain and victuall.

Ambaffadours refident with other P. inces. ti-

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pleasure known, concealing divers things which had been necessary so, them to know; but also caused them to write their advertisements unto him. And of the same Letters he used to conceale so, the compassing of his purpose many things both from all your other Counselours, and from your setsalso.

13. Also where good hospitality bath been used to be kept in houses and places of religion of this Realm, 4 many poose people thereby relieved, the said hospitality 4 relief is now decayed 4 not used: and it is commonly reported that the occasion thereof is, because the said Lood Cardinall bath taken such impositions of the Rulers of the said houses, as well so, his favour in making of Abbots and priors, as so, his visitation by his authority Legatine. And yet nevertheless taketh yearly of such Religious houses, such pearlie and continuall charges, as they be not able to keep hospitalitie as they were used to do: which is a great cause that there be so many Tagabonds, Beggers, and Theves.

14. Also where the same L. Cardinal said before the suppression of such houses as he hath suppressed, that the possessions of them should be set to ferme among your lay subjects after such reasonable yearly rent as they should well thereupon live, and keep good hospitality: and now the demesse possession of the same houses since the suppression of them hath been surveyed, met, and measured by the same how set above the value of the old rent. And also such as were sermors by Covent seal, and copieholders be put out and amoved of their fermes, or electompelled to pay new since contrary to all equitie and conscience.

15. Also the said Lozd Cardinall stiting among the Lozds and other of your most honourable Privile Councell, used himself, that it any man would she'w his minde, according to his duty, contrary to the opinion of the said Cardinall, he would so take him up with his accustomable words, that they were better to hold their peace then to speak. So that he would heare no man speak but one or two great personages, so that he would have all the words himselfe, and consumed much time with a fair tale.

16. Also the said Lo2d Cardinall by his ambition and pride bath hindered and mode many of your poore subjects for want of dispatchment of matters, sor he would no man should meddle but himself, insomuch that it hath been affirmed by many wife men, that ten of the most wisest and most expert men in England were not sufficient in convenient time to order the matters that he would retain to himselfe. And many times he deserved the onding of matters, because that sufters should attend and wait upon him, whereof he had no small pleasure, that his house might be replenished with suffers.

17. Also the said Lord Cardinall by his authority Legatine hath used, if any spirituall man having any riches or substance, deceased, he hath taken their goods as his own, by reason whereof their wils be not performed: And one mean he had to put them in fear, that were made Executors, to resule to meddle.

18. Also the said Lord Cardinall constrained all Dedinaries in England peerly to compound with him, or else he will usurpe halse, or the whole of the triperisticion by prepention, not sor good order of the Diocesses, but to extort treasure: so, there is never a poore Arshdeacon in England, but that he paid yearly to him a portion of his living.

19. Also the said Lord Cardinall hath not only by his untrue suggestion to the Pope chamefully standered many good religious houses, and, good verticus men dwelling in them, but also suppressed by reason thereof above thirty houses of Religion. And where by authority of his Bull he should not suppresse any house, that had mo men of Religion in number above the number of 6 or 7, he hath suppressed divers houses that had above the number. And thereupon hath caused divers offices to be sound by verdict untruly, that the Religious persons so suppressed had voluntarily sorsaken their said houses, which was untrue, and so suppressed open perjury to be committed, to the high displeasure of Almighty Son

20. Also the said Lord Cardinall hath examined divers and many matters in the Chancery after judgement thereof given at the Common law, in subversion

Hospitality in houles of Religion decayed.

Impositions.

Yearly charges.

Suppression of

Res fonable rents.

Above the value.

New fine.

Abused the Privy Councell.

All the words himfelfe.

Ambition and pride. Want of dispatch No man to meddle but himselse.

Suters to attend.

Taken the goods of Spirituall men deceased.

All Ordinaries, &c. to compound with him.

Slandered religious houses to the Pope. By authority of his Bull suppressed 30 bouses of Religion. Caused divers Offices to be found untruly, Perjury.

Examined matters in Chancery after judgemen

Cap.8.

of your lawes, and made some persons restore agains to the other party condemned that, that they had in execution by vertue of the Judgement at the Common lain.

Injunations.

21. Also the said Lord Cardinall hath granted many Injunctions by Writ, and the parties never called thereunto, nor Bill put in against them: and by reason thereof, divers of your subjects have been put from their lawfull possession of their lands and tenements. And by such means he hath brought the more party of the suiters of this your Realm before himself, whereby he and divers of his servants have gotten much riches, and your subjects suffered great wrongs.

His servants rich. The Popes pardons.

22. Also the said Lord Cardinall to augment his great riches hath caused divers pardons granted by the Pope to be suspended, which could not be revised, till that the said Lord Cardinall were rewarded, and also have a yearly pension of the said pardon.

Oppression.

23. Also the said Load Cardinall not regarding your lawes not justice, of his ertoat power hath put out divers and many fermous of his lands, and also Patentees of the Arch-bishopaick of Poak and the Bishopaick of Ainchester, and of the Abbey of St. Albons, which had good and sufficient grant thereof by your lawes.

Elections of Albots, Priors, &c. 24. Also the same Lord Cardinall, at many times when any houses of Religion have been void be bath sent his Officers thither, and with crasty persualions bath induced them to compremit their election in him. And that before he named or confirmed any of them, he and his servants received so much great goods of them, that in manner it bath been to the undoing of the house.

Visited. Extortion. 25. Also by his authority Legatine, the same Lord Cardinall hath visited the most part of the religious Houses and Colledges of this your Realm, and hath taken from them the twenty fifth part of their lively hood, to the great extortion of your subjects and derogation of your laws and prerogative, and no law to bear him so to do.

Injunctions.
ThreatnedJudges

26. Also when matters have been near at judgement by Proces at your Common law, the same Lord Cardinall hath not only given and sent Injunctions to the parties, but also sent so your Judges, and express by threats commanding them to defer the judgement, to the evident subversion of your lawes, if the Judges would so have ceased.

27. Also whereas neither the Bithop of Pork nor Winchester, nor the Abbey of S. Albons, nor the profit of his Legation, nor the benefit of the Chancery, nor his great pention out of France, nor his Wards, and other inordinate taking could not suffice him, he hath made his some Wincer to spend Seven and twenty hundred pounds by the year, which he taketh to his own use, and giveth him not past two hundred pounds pearly to live upon.

Pension out of France. His fon Winter.

28. Also where the said Lord Cardinal did first see unto your Grace to have your assent to be Legat de latere, be promised and solemnly protessed before your Hajestie, and before the Lords both Spiritual and Temporall, that he would nothing do not attempt by the vertue of his Legacie, that should be contrary to your gracious prerogative or regalitie, or to the damage or prejudice of the Aurisdiction of any Didinary, and that by his Legacie no man should be hurted not offended: And upon that condition, and no other, he was admitted by your Grace to be Legate within this your Realm: which condition he hath broken, as is well known to all your Subjects. And when that he made this promise, he was buse in his suit at Rome to visit all the Clergy of England both exempt and not seempt.

Legat De latere. His promife.
Nothing against prerogative or regality.
Or to the prejudice of ordinary jurisdiction.
Breach of promise.

29. Also upon the suit of the said Lord Tardinall at Rome to have his authority Legatine, he made untrue surmise to the Popes Polinesse against the Clerate of your Realm: which was, that the regular persons of the said Clerate had given themselves in reprodum sensum; which words S. Paul writing to the Romans applied to abominable sinne: which sander to your Church of England shall so ever remain in the Register at Rome, against the Cleray of this your Realm.

Vatrue furmife to the Pope of the Clergy.

30, Alfo the faid Lord Cardinall had the more part of the goods of Dodes Oppreffion and smith late Bithop of Lincoln, Bithop Savage of Dork, Matter Dalbye Arch: extertion. macon of Richmont, Mafter Tonyers, Doctor Rothall late Bifhop of Durhand, and of Dodo; Foxe late Bilhop of Minchester, contrary to their wils, and pour laws and justice.

31. Alfo at the Oier and Terminer at Pork, Proclamation was made that every man thould put in their bils for ertortion of Dedinaries, and when dis bers bils were put in against the Officers of the faid Load Cardinall of ertostion, for taking twelve pence of the pound for probation of Testaments, whereof divers bils were found before Buffice Firzherbert and other Commillioners, the faid Lord Cardinall removed the faid Indiaments into the Chancery by Cerciorari, and rebuked the faid Firzherbert for the fame cause.

32. Alfo the faid Lord Cardinall hath buffed and endeavored himfelf by crafhand untrue tales to make diffention and debate among t your pobles of

pour Realm, which is ready to be proved.

33. Alle the faid Lord Cardinals Officers have divers times compelled our subjects to serve him with Carts for carriage, and also his servants have taken both Corn and Cattle, Fifth, and all other Wintuall, at pour Braces price, of under, as though it had been for your Grace, which is contrary to your

24. Also the said Load Cardinall bath misused himself in your most honous rable Court, in keeping of as great effate there in your absence, as your Grace

would have done if you had been there present in your own person.

35 Also his ferbants by bertue of your Commission under your Broad Seal by him to them given, have taken cattel and all other biduall at as low a price as your Purbeyors have done for your Brace by your Prerogative, against the laws of your Realm.

36 Alfo where it hath been accustomed that your Purveyors for your honous rable houthold, have had yearly out of your Town and liberty of S. Albons three or four hundred quarters of wheat, truth it is, that fince the Lord Cardinall had the room of the Abbot, that your faid Durbeyous could not be suffered by him and his officers to take any wheat within the faid town or liberty.

37 Also he hath divers times given injunctions to pour servants that have been for causes before him in the Star-chamber, that they, nor other for them hould make labour by any manner way, directly of indirectly to your Brace to obtain your Braces favour or pardon; which was a prefumptuous intent for

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38 Also the said Lord Cardinall did call before him Sir John Scanly Bright, which had taken a farm by Covent Seal of the Abbot and Covent of Chester, and afterward by his power and might contrary to right committed the faid bir John Stanly to the prison of fleet by the space of a year unto such time as be compelled the faid Sir John to release his Tovent Seal to one Leghe of Adlington, which married one Larks daughter, which woman the faid Lord Cardinall kept, and had with her two children. Whereupon the faid Sir John Stanly upon displeasure taken in his heart made himself Ponke in Wellminster, and there died.

39. Also on a time pour Grace being at S. Albons according to the ancient custome used within your Aerge, your Clerk of the Parket doing his of fice, did present unto your Officers of your most honourable bouchold the prites of all manner of Aiduals within the precinc of the Aerge. And it was commanded by pour faid Officers to fet up the faid prices both on the gates of pour honozable houshold, and also within the market place within the town of of D. Altons, as of ancient custome bath been used. And the Load Cardinall bearing the same, presumptuously, not like a subject, caused the asoresaid prices which were fealed with your Braces Seal, accustomably used for the same, to be taken off and pulled down in the laid market place, where they were let up: Pulled downthe and in the same places set up his owne prices sealed with his seale, and price, &c.

Extortion of Ordinaries. Indictments of extortion of Ord. removed into the Chancery.

Made debate between the Nobles of the Realm.

Purveyance for Purveyance at the Kings price, Vid. inf. 3 5,36.

Keeping great estate in Court.

purveyance. Prerogative in puvreyance.

Purveyance.

Injunction not to fue for pardon for causes in the Star-chamber. A great prefump-

Oppression,

Legh of Adling-The Card, kept Larkes daughter and had by her two children.

Clerk of the Market. Prices of victu-

would

would if it had not been letted in Temblable manner, used your seal tranding upon your gates. And also would of his presumptuous mind have openly set in the stocks within your said town your Clerk of your market. By which presumption and usurpation your Brace may perceive that in his heart he hash reputed himself to be equal with your reall Pajesty.

40. Also the said Lord Tarvinals of his further pompous and presumptuous mind bath enterprised to join and imprint the Cardinals hat under your arms in your coin of groats made at your City of York, which like deed hath not been seen to be done by any subject within your Realm before this time.

41. Allo where one Sir Edward Jones Clerk Parfon of Dzewig in the County of Buck' in the sighteenth yeer of your most noble reign let his fain Parlonage with all tithes and other profits of the fame to one William John. fon by Indenture for certain years, within which years, the Dean of the fair Cardinals Colledge in Drenfoed pretended title to a certain portion of tithes within the laid Parlonage, supposing the laid postion to belong to the Bar. fonage of Chichelly, which was appointed to the Paiozy of Tykeford lately fuppreffed, where (of truth) the Parlons of Drewly have been peaceably poffeffed of the faid postion out of the time of mind. Whereupon a Subpoena was directed to the faid Johnson to appear afore the Lord Cardinall at Hampton Court, out of any tearm, with an Injunction to fuffer the faid Dean to occur the faid postion. Whereupon the faid Johnson appeared before the faid Lord Carbinall at Hampton-Court, where without any bill, the faid Lord Carbin nal committed him to the fleet, where he remained by the space of twelve weeks, because he would not depart with the said postion. And at the last upon are cognifance made that he thould appear before the faid Lord Cardinall when foever he was commanded, he was delivered out of the fleet; howbeit as per the faid postion is so kept from him that he dare not deal with it.

42. Also where one Martin Decowra had a lease of the Panno; of Ballall in the County of Warrivick to, tearm of certain years, an Injunction came to him out of the Chancery by writ upon pain of a thousand pounds, that he should avoid the possession of the same Panno; and suffer Sir George Throckmorton knight to take the profits of the same Panno; to the time the matter depending in the Chancery between the Lord of S. Johns and the said Decowra were discussed. And yet the said Decowra never made answer in the Chancery, no ever was called into the Chancery so, that matter, and now of late he both received a like Injunction upon pain of two thousand pounds contrap

to the course of the Tommon law.

43. Also whereas in the Parliament Chamber, and in open Parliament communication and devices were had and moved, wherein mention was an incident made of matters touching herefies, and erroneous fects, It was fpoken and reported by one Bishop there being present, and confirmed by a good number of the fame Bishops, in presence of all the Lords Spirituall and Tempozall then affembled, that two of the faid Bithops were minded and defired to repair unto the University of Cambridge for examination, reformation, and correction of fuch errors as then feemed and were reported to reign amongst the Students and Scholars of the same, as well touching the Lutherane fed and oplo nions, as otherwife, The Lord Cardinall informed of the good minds and intents of the faid two Bithops in that behalf, exprelly inhibited and commanded them in no wife to to doe. By means whereof, the fame errors, as they affirmed, creft more abroad and took greater place; faying furthermore that it was not in their defaults, that the fato herefies were not punithed, but in the faid Load Cardi nall, and that it was no reason any blame or tack should be arrected to them so his offence: whereby it evidently appeareth that the faid Lord Cardinall be sides all other his hainous offences, hath been the impeacher and disturber of due and direct correction of herefies, being highly to the banger and perill of the whole body, and good Thiftian people of this your Realm.

44. Finally, foralmuch as by the aforefaid Articles is evidently declared

The Cardinals hat in the Kings coin of groats, &c.

Subpans.

Injunation.

Herefies and er-

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to your most reall Pajesty. That the Lord Cardinall by his outragious pride both greatly shadowed a long season your Braces honor, which is most highly to be regarded, and by his insatiable avarice and ravinous appetite to have riches and treasure without measure, both so grievously oppressed your poor subjects with so manifold crasts of bribery and ertortion, that the Common-wealth of this your Braces Realm is thereby greatly decayed and impoverished. And also by his cruelty, iniquity, affection, and partiality, hath subverted the due confice and order of your Braces laws to the undoing of a great number of your long people.

please it your most royall Majesty therefore of your excellent goodnesse to wards the Weal of this your Realm and subjects of the same, to set such order and direction upon the said Lord Cardinall, as may be to the terrible example of other to belware so to offend your Brace, and your laws hereaster. And that he be so provided so, that he never have any power, jurisdiction or authority breaster to trouble, ver, and impoverish the Common wealth of this your Realm, as he bath done heretosoe, to the great hurt and dammage of every man almost high and low, which so your Brace so doing, will daily pray, as these why is, to Almighty God so, the prosperous estate of your most royall Maje by, long to endure in honor and good health, to the pleasure of God, and your "Chief suffice bearts most desire. Subscribed the first day of December the 21 year of the reign of Eng'and. Sir Anth-Firz and Soveraign Lord king Henry the 8.

T. More. T. Norffolk. Charl. Suff. Tho. Dorfet, H. Exon. John Oxinford. Court of Com-H. Northumberland, G. Shrewsbury. R. Fitzwater. T. Rocheford. T. Darcy. mon Plas. W. Mountjoy. William Sandys.

William Fitzwilliam. Henry Guldeford. * John Fitz James. * Anthony Fitz Herbert.

so thele Articles began to be subscribed by Sir Thomas More Lord Chan- but never fo ca!-

colon, and ended with the two Judges of the law.

There be in this Court many Officers, Pinisters, and Clerks of the Court, the pincipall whereof is the 2 Paster of the Rols, anciently called Garden des this office. Rolles, Clericus rotulorum, Custos rotulorum. And this is an ancient office, and state of the Rols, anciently called Garden des this office. The Rolles, Clericus rotulorum, Custos rotulorum. And this is an ancient office, and so see the Chargen and this office, is called domus Conversorum, so called because 'King H. 3. Holling th. 138 I. 8. I

**Ring E. 3. by his Charter anno 51 of his reign did grant after the death of **Rot.Pat. 11 Ap. VVilliam Burstall then keeper of the Rols and of the same house of Converts of \$1 E.3 which you the kings grant to the keeper of the Rols so; the time being, and annered it to may read at large in Hollingsh. VVilliam, the Chancelos of keeper of the Breat Seal after the voidance of the said exbunded opelate of keeping of the Rols to institute successively the keepers of the time Pail. anno 1 Rols, in dicta domo Conversorum, & custodes illos ponend' in possessione ejustalla anno 1 Rols. This Charter was consistent by Act of Parliament, as by that which de la Chancery & del a Chancery &

followeth appeareth.

A nostre tresdoute H. le roy & son honorable counseil en cest Parliament supplie son petit Clerke William de Burstall Gardeiner des rolles de la Cantellarie, & Gardeiner de la Meason des Converses de Londres quele est de stresse de la Cantellarie, & Gardeiner de la Meason des Converses de Londres quele est de sur supplie la chappelle de les edifices du dit meason, & nostre of converts of Seignior le roy dareine (que dieu assoil) pur maintenance de la dit Chappelle & meason a la prier du dit William granta pur luy & ses heires per King.

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* Sir Anth. Fitzh. a Justice of the a He was not ca!led Matter of the Rols, unill 11 H.7.ca.20. led in any Letters Patents of See the Charby King H. 3. Hollingth. 1281. Vid. Kor.Pal. and petitioned in Parliament for in Hollingth. pa.1281.1282. Garden des rolles de la meason des.

ses Letters Patents que le dit Meason de Converse apres le decease du dit William demerera a tous jours as Gardein de dits Rolles pur le temps este ants tanque come ils seront en le ditossice sans certain forme comprise en Letters sursdites, Please a nostre dit Seignior le roy & Seigniors deu Parliament consirmer ladit grant & les Letters Patents issint ent faitz et les choses comprises en yeels en ouier de charitie. Un persunto full assont mas giben mu Authority of Parliament.

Ror Par. 6 R. 2.

After which Act of Parliament John de Waltham Gardein of theeper of the Rols obtained of R.2. in the firth year of his reign Letters Patents, where hy the king granted to him & successoribus sais Custodibus Roculorum the said house of Converts; and the reason hereof seemeth to be, so, that in the said Charter of 5 1 E.3. Sibi & successoribus sais wanted. This John of Waltham was in 12 R.2. Bishop of Salisbury, and after Areasurer of England. Hereby it appeareth what estate the Spatter of the Rols hath in domo Conversorum. And this house is the place where the Rols of the Chancery are kept, and are so called because they are written in parchment, and made up in bundels of rais, that is to say, of Charters, Letters Patents, Commissions, Deeds enrolled, Recognisances, ac.

These Records lince the beginning of H. 7. remain in the Rols, and all be

fore were transmitted into the Tower, and there remain.

Alfo for further manifestation bereof, we have thought good to fet bown a Letters Patents of this office in the 27 year of H.6. and the rather for that it was granted Authoritate Parliamenti, in these woods, Henricus Dei gratia Rer Anglia, & Francia, & dominus Hibernia, omnibus ad quos prasentes lia pervenerint. Sciatis quod cum nos tertio decimo die Novembris, anno regnino. ftri decimo septimo constituimus dilectum cleticum nostrum Johannem Stopenden Custodem rotulorum & librorum Cancellaria nostra cum omnibus ad officium illud spectantibus, percipiend'in eodem officio feoda, commoditares & proficua consueta, quamdin nobis placuerit. Er ulterius dederimus, & concesserimus eidem Johanni eustodia domus nostra Conversoru prafato officio pro inhabitatione dicti Custodis per progenitores nostros quondam reges Anglizab antiquo deposita, & annexa: Habendum & tenendum eustodiam illam cum omnibus juribus & pertinentiis spectantibus ad eandem-prout in liis nostris petentibus inde confectis plenius continetur. Nos bonum & gratuitum servicis quod dilectus elericus noster Thomas Kirkby nobis ante hac tempora multipliciter impendit, indiesque impendere non defistit merite contemplantes, acde fidelitate, circumspectione & industria ipsius Thoma plenius considentes, constituimus ipsum Thomam Custodem rotulorum & librorum Cancellaria nostra cum omnibus ad officium illud spectantibus, percipiendo ineodem officio seoda, commoditates, & proficua consueta à tempore quo officiam illud per Cessionem seu alio modo quocunque proximo vacare contigerit quamdiu nobis placuent. Et ulterius dedimus & concessimus, ac p præsentes damus & concedimus eide Thoma cultodiam dicta domus nãa Conversorum prafato officio pro inhabitatione ejusdem custodis per dictos progenitores nãos ab antiquo(ut pramittitur) dispositæ & annexæ, Habend' & tenend'eidem Thomæ custodiam illam cu omnibus juribus & pertinentiis spectantibus ad eandem quamdiu ipsum Thoma dictum officium Custodis rotulorum & librorum prædictoru habere & tenere sive occupare contigerit. Eo quod expressa mentio de vero valore annuo officii pradicti & caterorum pramiflorum seu alicujus corum, aut de aliis donis seu concessionibus per nos præfato Thomæ ante hæc tempora factis in præsentibus fa-Eta non existic, aut aliquibus Actibus sive Ordinationibus in contrarium eduis five ordinatis, aut aliqua alia causa, re,seu materia in aliquo non obstantibus, la cujus rei testimonium has lias nias fieri fecimus patentes. Testemeipso apud Maidston vicesimo nono die Martii, Anno regni nei vicesimo quinto, Authoritate Parliamenti,

Clericus noster
Custos rotulor
& libror
Cancellar' nostra cu
omnibus ad ossicium illud spect'.
Custodia domus
nostra Converforum.

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Of latter times in the grant of this office be is is fittled Clericus ' parva ba- * Belonging angz, Cuftos rotulorum, & domus Converforum.

The spatter of the Rals bath in jure officii, the gift of the offices of Sir clerks in the Chancery.

In the absence of the Load Chancelo, be heareth causes and gibeth orders. toge in the third part of the Inftitutes, cap. Prempnire.

ciently to his of-See the flatute of 14 H.8, cap.8.

CAP. IX.

The Court of Requests.

Abing spoken of the Court of Chancery, finance and governed by the Lord Chancelour, or theeper of the Great Seale: It that be fit in this I place to treat of the Amifolation of the Court of Requests, toperain the Lood Baibie Seale at his pleasure, and the spatters of Requests doe assemble the Courts of and fit. And the original institution hereof was, that fuch petitions as were mbibited to the King, and delibered to the Matters of the Requetts, thould be peruled by them, and the party directed by them to take his remedy according to their cafe, either at the Common law, or in the Court of Chancery. And there: mon they mere called Magistri à libellis supplieum : and in this respect this exting and confiditation was called the Court of Requests, as the Court of Andience and Faculties are called Courts, about they hold no plea of conimportie.

These which in former times would have this Court to be a Court of judica: fo.136.b. time, took their aime from a Court in France, which is called Curia corum quos Requestarum, i, supplicationum palatii magistros vocant apud quos causa egrum tantum agitur, qui regis obsequiis deputati, vel privilegio donati sunt: hujus curiæ Judices octo funt. But others taking this jurisdiction to be too narrow, contend to have it extend to all causes in equitie equall with the Chancery, and their de-

law, as thall evidently appear.

In the reign of H. 8. the Hafters of Requests thought (as they intended) to frengthen their jurisdiction by Commission, to hear and determine causes in equity. But those Commissions being not warranted by law (for no Court of Equity can be raised by Commission) soon vanished, for that it had neither Ad of Parliament, not prescription time out of minde of man to establish it.

crees to be absolute and uncontrollable. But neither of these are warranted by

Mich. 40 & 41 Eliz. In the Court of Common Pleas, upon a Bill erhibited in the Court of Requests against Flood, for default of answer an Attachment was awarded against Flood under the Privie Seale, to Scepney then Sheriffe of Carnarven, who by force of the faid Wirit attached Flood, and would not let him go, untill he had entred into an Obligation to the Sheriffe to appear before his Pajesties Councell in the Court of Requests: upon which Obligation the Theriffe brought an Action of debt for default of appearance, and all this matter appeared in pleading. And it was adjudged upon folemne argument, that this which was called a Court of Requests, or the White Hall, was no Court that had power of judicature, but all the proceedings thereupon were Coram non Judice, and the arrest of Flood was false imprisonment, so as he might avoid the bond by Dures at the Common law, without aide of the Catute of 23 H.S. ca. 10,

The punishment of Perjury in the Court of Whitehall by the statutes of 33 H. 8. cap. 9. and 5 Eliz. cap. 9. both not give it any jurification of judicature, no moze then the flatutes that give against a Gasler an action foz an escape, oz

See hereafter Audience and Faculties, pa.

Caffaneus 7 parts

See before cap. Chancery Perots cale,pag.87. See the Articles against Cardinal Woolfy.pa.89. See Hals Chronicle ubi iupra. and Guines learned preface to his reading in the Inner Temple, about 16 El. *Tr.40 El.in Có. muni banco inter

Stepney et Lloyd. Rot. 1157. See Hals Chron. 8 H.8 .fo.59. agreeth with the

punisheth a Gaoler of his owne wrong for ertortion an officer of his own wrong shall be punished by the statutes in that case provided, and yet the statutes thereby make them no landull officers; sor it is one thing to punish, and another to give authority. So it was justice in the Parliaments to punish perjury in the Whitehall, although the Court were holden by usurpation, and so be sore it appeareth to be by the judgement in Scepheys case. See Beverlyes case lib. 4. 123, 124, and the case of the Dryhans of London, Lib. 5. so. 73, where it is called the Tourt of Requests, taking the same to be according to the Drighall institution. And as gold or silver may as current money passe even with the proper Artificer, though it hath too much allay, untill he hath tried it with the Touchstone: even so this nominative Tourt may passe with the Learned as justifiable in respect of the outside by vulgar allowance, untill he advisedly looketh into the roots of it, and try it by the rule of law, as (to say the truth) I my self dur. But errores ad sua principia referre, est refellere, To bring errors to their sirst, is to see their last.

The Author of the book of divertity of Courts written in 21 H. 8. doth not fa much as mention any fuch Court: not the Dodo; and Student who wrote in 2 3 H.8, treating of matters of equity never mentioneth any luch Court : no. in any of the Reports of H.S. or of any other before him, we finde any mention made of any fuch Court. Berein, as in all other things, we have dealt clearly and plainty, upon tohat authorities and reasons we have grounded our opinion: and when we undertook to write, we refolved to publif nothing reluctance consciencia, which we (by Gods speciall grace) have performed, without any spark of contradiction, or respect of any private whatsoever: That Tharge ever forme ding in mine eare, that is given to all that take upon them to write, Ne and fallum audeant, ne quid verum non audeant. And although the late be fuch as we have fet down; yet in respect of the continuance that it hath had by permise tion, and of the number of decrees therein had, it were worthy of the wisdome of a Warliament, both for the establishment of things for the time past, and for some certaine provision with reasonable limitations (if so it shall be thought convenient to that bigh Court) for the time to come: Et fic liberavi animam

Error, qui non refissiur, approbatur.

meam.

Regula.

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CAP. X.

The Court of Common Pleas.

the statute of Magna Carta cap. 11. it is probibed, Quod communia pla- Mag. Cart. ca. 11. ita non lequantur curiam nostram, sed teneantur loco certo. Habet Rex etiam curiam, & Justiciarios in banco refidentes, qui cognoscunt de omnibus placitis, de quibus authoritatem habent cognoscendi, & fine warranto jurisdictionem non habent nec coercionem, Et Paulo post, Sunt etiam alii Justiciarii * perpetui , certo loco refidentes, fient in Banco , loquelas omnes de quibus *tit fup.fo. 108,4 habent warrantum terminantes, qui omnes jurifdictionem habere incipinnt prefito facramento.

Ouftre ceo voilons q Justices demorgent continualment a Westm. ou ailors la, ou nous voudrons ordeiner, a pleader comunes pleas folong; ceo que nons les manderons per nous breifes; issint que des parols deduces devant eux per nous

breifes event record.

Dut of thele, three things are to be observed: First what thall be said communia placica. They are not called communia placita in respect of the persons, but in respect of the quality of the pleas. Regularly Pleas are divided into pleas of the Croton, and into Common of Civill Pleas. Pleas of the Crotone are Treason and Felony, and Pispelion of treason and felony, te. This Court is the lock and the kep of the Common law in Common Pleas, for herein are reall actions, whereupon fines and recoveries (the common affurances of the Realm) do palle, and all other reall actions by Daiginali Wirits are to be betermined, and alfoot all Common pleas mirt or perfonall: in divers of which, as it appeareth before in the Chapter of the Kings Bench, this Court & the Kings Bench have a concurrent authority.

Robert Parning the litings Serjeant at Law 24 July 14 E. 7. was created Chief Juftice of England, in which Office be remained untill the 15 of Des cember following, and then he was made Lord Treasurer of England; In which office he continued untill the 15 year of E. 3. when he was made Lord Chancelour of England: and while he was Lord Chancelone, he would come and fit in this Court being the lock and key of the Common law, as is aforefaid: and there debate matters in law of greatest difficulty, as it appeareth in the repost of the year of 17 E.3. fo.11. 14.23.37, &c. knowing afforeoly, that he that knowes not the Common law, can never rightly judge of matters in equity: whereof at that time very few matters were depending before him in Chan-

2. Thele woods of Bracton, [fine warranto jurifdictionem non habent,] are well ervounded by Britton, that that Warrant is by the Bings Write, Solong; ceo que nous les manderons per nous breifes. So as regularly this Court cannot hold any common plea in any action, reall, personall, or mirt, but by Wirtt out of the Chancery, and retoznable into this Court.

3. That in certain cases this Court may hold plea by Bill without any Writ in the Chancery, as for or against any Officer, Minister, or privileged perfon

of this Court.

Also this Court without any Wirlt may upon a suggestion grant prohibitions 8 R. 2. Areachto keep, as well Tempozall as Ecclesiasticall Courts, within their bounds and furisdiction, without any oxiginall ox plea depending : for the Common law lobich in those cases is a prohibition of it self stands in stead of an Driginall, whereof there be infinite prefidents in this Court. And Sir Thomas Egerton fur leftat. 34.

Bracon lib. 3.

Britton fo.z. Vide Fleta lib. 2. cap. 2. & Lib. 1. cap.54.

See the fecond part of the Inftitutes Mag. Cart. cap.11. Vid. 17 E.3.50. Quare incumbravit, and in the Chapter of the Kings Bench here before. . Vide fup .pa. 79

ment fur. prohib. pl. ultimo. 9 H 6.61. 10 E.2. adion

Lord Chancelour Mich. 7. Jac. Regis called Fleming Chiefe Instite and all the Judges of the kings Bench, and Tanfeild Chief Baron, and the rest of the Barons of the Erchequer, of whom the Chancelour demanded whether the Court of Common Pleas had authority to grant any prohibition without Writ of Attachment or plea depending: who upon mature deliberation unanimously resolved, that this Court might grant prohibitions upon suggestions without any Warit of Attachment or plea depending so the reason as according to a multitude of presidents. The Justices of the Common Pleas were not called, because they had often resolved the point before. So as now this point concerning the jurisdiction of this Court so granting of prohibitions upon suggessions, where there is neither Warit of attachment, nor plea depending, is in peace, being resolved by the Justices of the Bench and of the Common Pleas, and by the Barons of the Erchequer.

4. This Court upon an adjournment upon a forein boucher may hold plea likewife upon other forein pleas and upon generall bastardy, Ne unques accouple in loiall matrimony, &c. for none but the litings Courts, and no inferiour Court thall write to the litihop. So likewife upon ancient demelne pleaded, to

The Chiefe Justice of the Common Pleas is created by Letters Patents, Rex, &c. Sciatis quod constituimus dilectum & sidelem E. C. militem, capitalem Justiciariu * de Communi banco. Habendu quamdiu nobis placuerit, cum vadiis & seodis ab antiquo debitis & consuetis. In cujus rei testimonium has literas nottras sieri secimus patentes. Teste, &c.

And each of the Justices of this Court hath Letters Patents, Sclatis quod conflictions dilectum & fidelem P. W. militem unum Justiciariorum nostrorum de Communi banco-&c. But none can be constituted Judge of this Court unless he be Serjeant at Law of the degree of the Coise, and get in the Letters patents to them made, they are not named Serjeants.

The Jurisdiction of this Court is generall, and extendeth throughout all

England.

For the antiquity of this Court see before in the Chapter of the Kings Bench adjoyning thereunto, 6 E.3, where a fine was levied in this Court 6 R.1, and in 39 E.3, a plea in this Court in 1 H.3. And that I may speak once so all the Institutes of the Kings Bench, or of this Court of the Common Bench, that they observe the ancient rule of law, Nemo duobus warr officies, so, none of them can take any other office, or any see, or reward but of the King only. And it were behooveful to the Common wealth and advancement of Institute and right, and preferment of well deserving men, if the like course were holden concerning all offices, as well Ecclesialical as Temporall and Civil : and that no man following the example of the reverend Indges should enjoy two offices. For severall offices were never instituted to be used by one man.

The jurisdiction of this Court for punishment of their Differs & Ministers. Petrus de Lussenham indictatus quod ipse in Curia hic à die Sancti Hillarii in 15 dies Anno regni regis nunc 19, falso et maliciose delevit adjornationem ejusdem esson ad diem illum intrati de com' Rotel. pro Roberto Attehale de South-Lussenham petente & Radulph. de Kirkeby tenent' de placito terre, &c. Et questitus qualitér se velit inde acquietare, dicit quod in nullo est inde culpabilis, & de hoc ponit se super juram' de sociis in Cur' hic. Et qui jurati dicunt super Sacramentum suum, quod pradictus Radulphus pradictis die & anno suit in Cur' hic, & dixit pradicto Petro quod pradictum essonum fuit adjornat', & pradictus Petrus intravit infra Bancum & rotulos de essoin', et cum perpendisset quod le ass. suit appositum molivit ipse policem suum & inde frotavit super le ass. suum, &c. Ideo considerat' est quod pradictus Petrus committitur Gaola de Fleete custodiend' per unum annum et unum diem pro salsitate et deceptione pradictis, et tune redimendus

See the second part of the Institutes all these points.

* So called the Common Bench in respect of the Common pleas there holden.

See the second part of the Inflitutes, Mag. Cart. cap. 11. 6 E.3.52. 39 E.3.24. 18 E.3.stat.3.

Term. Trin. Anno 19 E.1. in communi banco, Rot. 146 Rotel. in Thesaur. 0.

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pro voluntate domini regis, &c. Et sciend' quod liberatus fuit Gaoladie Mercurii prox' ante festum Santta Margareta virginis hoc anno, &c. Postea die Veneris prox' ante festum Sancta Margareta virginis Anno 20 deliberatus est pradictus Petrus, et inhibitum est ei, quod nihil habet nist vestes pendentes in dorso, admittitur ad dimid Marc. per 20 li. Wil. de Okeham, Ita tamen quod fi ad plus sufficiat, &c. Instic' reservant eis poteftatem, Oc.

Et quia pradictus Iohannes de Vpton in Cur' hic recognovit quod hoc Mich. 19 E.1. in anno in astate concessit quod pradictam defaltam remitteret, et pro illa concessione recepit 20 s. in Autumpno, et postea ad pradictam tertiam septimanam Santti Michaelis idem Iohannes remisit pradictam defaltam, per quam pradictus Willielmus recuperaffe potuit pradictum ten in fraudem et deceptionem pradicti Willielmi; Ideo ipse pro falsitate pradi-Ha committitur Gaola de Fleet commoraturus per annum et diem, &c. per formam * ftatuti, &c. Postea post annum et diem, &c. pradictus Iohannes * W.1. cap.29. venit et deliberatus est secundum statutum, &c. et inhibitum est ei, &c. et finivit pro una marca.

Bene examinatur fraus de Brevi in Iur' per Vic' retorn' Termin' Fodem Rot. nu. Trin' & per quendam alium panellum ejusdem mutatum & contrefe-Elum, unde contrefactor per Iur' est culpabilis, & adjudicatur Gaola de Fleete per annum & diem. Et quia scriptor ejusdem brevis licet de falstate & malitia non fuit particeps, nec aliquid mali fecisse puravit, &c. Cu-

sodiatur, &c. et finem fecit per unam marcam.

Et quia Rogerus de Langeport Attornatus est male fame, & defatigavit Hil. 20 E.1. in Cur': Ideo committitur Gaola, &c. Et quasitis rotulis de Indictamentis Banco Ror. 109. Attornatorum, &c. compertum est quod idem Rogerus indictatus fuit, quod ipse fuit conversans in cancell' & socius Ada de Ponte fracto, qui falsavit sigillum Domini Regis, & falsa brevia composuit, &c. Et qualitus qualiter se velit acquietare, dicit quod Clericus est, et non potest in Curia hic Domino Regi inde respondere. Et quia nullus ordinarius ipsum petit, &c. nec ipse Rogerus aliter se velit inde acquietare, Ideo ipse committitur Gaola quousque,&c. Et mittitur ad Turrim London , &c.

The Officers of this Court are many, viz. Custos Brevium, tres Prothonorarii, three Prothonotaries: Clericus Warrantorum, Clerk of the Warrants: Clericus Argenti Regis, Tlerke of the Bings filver: quatuor Exigendarii, Erigenters: quatuordecem Falazarii, Filagers: Clericus Juratorum, Clerk of the Juries : Clericus Essoniorum, Clerk of the Essoignes : Clericus Utlagariorum, Clerke of the Dutlawies : this belongs to the Office of

the Attorny Generall, who exerciseth it by Deputy.

In former times great abuses have been by Attornies of this Court, by lung out a judiciall Proces without any Driginall; which when it hath been found out, it hath beene severely punished; for many inconveniences 20 H.6.17.1. thereupon doe follow. For example, in 20 H.6. an Attorny of the Com= W.1.cap 29. mon place had made a Capias directed to the Sheriffe of Posk, whereof there was no Diginall; at which day of the retoine an Attachment was awarded by the Court against the Attorny to answer the deceipt, whereupon he was taken and examined, and confessed it, and thereupon by the Court he was committed to the Fleet, imprisoned for a moneth, and that his name should be drawn out of the Roll of Attornies, and never should be Attorny either in this Court or any other, and thereunto he was sworne, Pote the severity of this judgement doth the with heynousnesse of the offence.

Banco Rot. 191. Northampton.

17 E.3.51,52. Nota, he may be punished for the crime, & the party grieved may have his action.

Pasch. 20 E.z.in Banco, Rot.post

Cap.10, An Attorny lued out an Habere facias feifinam againft one, by force where of the true tenant was put out of his freehold, where in truth there was no Record of any recovery : the party grieved brought an action of deceit against the Attorny, and recovered damages, and the Attorny imprisoned.

Memorandum quod Magister Fohannes Lovell qui fuit Custos Rotula. rum & Brevium Domini Regis de Banco per manus suas proprias lib. ravit Johanni Bacon Clerico de mandato Domini Regis in hac verba Edwardus, &c. Dilecto Clerico suo Johanni Lovell Salutem. Cum com-miserimus dilecto Clerico nostro Johanni Bacon custod' Rotulorum & Brevium nostrorum de Banco; Habendum quam diu nobis placuerit : Voli mandamus quod eidem Johanni Rotulos & Brevia pradicta que sunt in custodia veftra ex commissione nostra per Chirographum inde inter vost ipsum conficiend sine dilatione liberetis custod' in forma pradicta. T. m. ipso apud Stebenbeth 17 Aprilis Anno regni nostri 20.

Super quo pradictus Iohannes liberavit dicto Iohanni Bacon Reinles & Brovia de Termino Sancti Michaelis Anno 17, usque hunc Terminum, & similiter Rotulos de Esson'. Et scripta dedicta & suspecta cum talleis dedict, una cum composis dedict', Ac etsam 160 not' finium, duas ligulas

de recordis sine die, & 14 Certificat' Episcoporum.

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CAP. XI.

The Court of Exchequer.

The Anthority of this Court is of originall jurisdiction without any a Bricton fo. 2.6. Committion. De this Court Britton fpeaking in the Kings person saith. a Volons nous que a nous Eschekers a Westm' & ailors eyent nous b Treaforers, & nous Barons illonques Jurisdiction & record de choses que touchent four office a oier & determiner touts les causes que touchent nous debts, & auxi a time they were nous fees, & les incident choses, fans les queux tiels choses ne purront estretries, Barons and Peers & que ilz eyent power a conuster de detts que lon doit a nous dettors per ou nous puissons pluis toft aprocher a nre dett.

d En droit des purprestures voilons nons que le noisances soient outtes aux coflages des purprestours, & les sufferables soient prite in nostre maine a la vahe per an soit inrolle, & solonque le discretion des Treasorers & des Barons de nous Eschequers soient arenes à see farm a eux que pluis voilent doner.

Et soit auxi enquis de nos customes de quirs & de leynes qui les ount coilles, Et so. 38.b. acombien les coillours ount bien suffert de passer de sackes de leyne sauns payer custome, & combien eit valu la custome chescun au en chescun mannere de custome a nous apurtenant & ceux articles soient termines a nostre Escheker selone la discretion de nos Barons,

See the Cultumer of Mozmandy, cap. 5. & 6. touching the Erchequer there, both of another Jurisdiction, and of other Judges, and Officers, then our Court of Erchequer to.

Lescheker est un place quarre que solement est ordeine pur le prou le roy Mirrorca.1.5.141 on deux Chivaliers, 2 Clerks, ou 2 homes, l'res sont assignes pur Oier & Termiper les torts faits al roy & a sa corone en droit de ces sies & ces franchises, & les accounts des Bayliffs, & des receivors de deniers le roy & des administrators de ces biens per la viewe de une Soveraign que est Treasorer de Angliterre. Les deux Chivaliers soloient estre appeles deux Barons pur afferer les amerciaments de counties, & des Barons & des tenants counties & baronies cy que nul ne fuit affere forfque per ces Piers.

A celle place estoit assigne un Seale ove garden pur faire ent acquittance de chescun payment que avoir le voloit, & de fealer les bres & les estrets fouth cere verte issant de celle place pur le prou le roy. En celle place sont auxi Chamberleines & plusors auters ministers que ne touch my molt a la ley.

Ordeine fuit Leschequer in manner come ensuift, & les paines pecuniels de Countees & Barons en certein, & auxi de tenants, Counties & * Baronies dimemlies & que ceux amerciaments fuissent affered per les Barons del Eschequer,& que lein envoiast les estreets de lour amerciaments al Eschequer ou que ilz fuissent amercies en la Court le roy.

Ouster ceo nul Common plea ne soit desormes tenus en Leschequer enconn-

ter la form de la grand Charter.

Fleta (for Bracton treateth not of this Court) faith. Habet & Rex Curiam fram & Justiciarios suos residentes ad Scaccarium. And this is all I finde Mrtic. Sup. Cart.

This Court is divided into two parts, viz. judiciall Accounts, called Scaccarium computorum, and into the Receipt of the Erchequer. h Una origo utrinique g Fletali.2.ca.2. Scaccarii, superioris scilicet, & inferioris, sed quiequid in superiori computatur, in h Ockam. inferiori fol vitur.

Before we observe any thing out of these ancient Authors and Acts of Pari liament, it shall be necessary to set down the great Officers, the Judges, and

rers in the plurall number. c Of ancient of the Realm, lib. nigro. Scaccar parte 1. ca.4. See the 14 chap. of Mag. Cart. and the exposition of the same. d Et fo. 29.b.

De la place del

Et ca.1.6.3. * This was in respect of the tenure, for all Earldomes and Baronies were holden in Capite. 20 E.z. aff. 120. 26 aff.37. cap.4 28 E.1. Stat. de Rotelad. 10 E.I.Reg. 187.

other Officers and Ministers of this Court, as they be at this day,

Fiscus in one sense is taken for the Erchequer , properly it is Sporta a Bam ver wherein the confications, lellements, and other moneys of the king were car. ried into the Treasury.

1. Dominus Thefaurarius Angliz: which office he hath at this day by the de. The Officers livery of a white fraffe, at the kings will and pleasure. In former times be bad this great office by delibery of the keys (golden keys) of the treasury: when treas fure failed, the white staffe ferved to rest him upon it,0; to bive away importunate fuiters.

2. Thefaurarius Scaccarii, anciently called Arcarius ab area, and this office be hath by Letters Patents. For both these offices he hath 365. 1. fees, robes out of the Wardon 15. 1. 7. s. 8. d. In toto 380. 1. 7. s. 8. d. " Hugo Patelhull mas first Areasurer of the Erchequer, and after Summus Thesaurarius.

Cancellarius Scacearii, that keepeth the Seal. See Pl. Com. 321, Lescheoner ad Chancelor & Seale; & les Bres usuall in le Chancery in Leschequer, &c. font pluis ancient que le Register. See of the Chancelog of the Erchequer bereafter in the Court of the Erchequer Chamber.

Capitalis Baro & Barones alii.

Subthefaurarius Seaccarii, anciently called Locum tenens Thefaurarii, Petrus de Willebye locum tenens Thefaurarii, Anno 30 E.t. et plures alii: De nameth the two praifers of all the goods feifed or not customed, and ordereth whether the party thall have them at the price or not, he appointed the Steward, Cook and Butler for the provision of the Star-chamber : he in the vacancy of the Tras furer doth all things in the Receipt, that the Treasurer doth. In the flatute of 39 El. ca.7. and 43 El. in the Sublidy of the Clergy he is called Under treas rer of England. Concerning this matter I finde of record this wit fall lowing.

Edwardus Rex Anglia & dominus Hibernia Baronibus & Camerariis suis de Scaccario suo, Salutem. Quum pro eo quod a venerabilis pater W. Archiepiscopus Eborum nuper Thefaurarius Scaccarii pradicti, circa diversa negotia in partibus borealibus est occupatus, quo minus intendere possit ad ea que adossicium illud in b dicto Scaccario pertinent exercenda, constituerimus venerabilem patrem Johannem Wintoniensem Episcopum etenentem locum Thesaurarii Scaecarii prædicti-quousque de officio illo aliter duximus ordinandum, percipiendo in eodem officio (dum illud fic tenuerit) feodum confuetum, d prout in litteris nofiris patentibus præfato Episcopo inde confectis plenius continetur. Vobis mandamus quod ipsum Episcopum ad officium admittatis & ei in his qua ad officium prædictum pertineant intendatis in forma prædicta. Teste Edwardo silio nostro primogenito Custode regni nostri, apud Hereford Sexto die Novembris Anno regni nostri vicesimo.

The office and duty of the Lord Treasurer of England both appear by his oath, which frandethupon eight Articles.

1. That well and truly be thall ferve the King and his people in the office of Treasurer.

2. That he thall doe right to all manner of people, poor and rich, of fuch things as concern his office.

3. The Kings treasure he shall truly keep and dispend.

4. We thall truly counfell the Bing.

5. The Kings Councell he thall ' lapn and keep.

6. That he chall neither know not luffer the Kings burt, not his differiting, no, that the rights of the Crown be decreased by any mean, as far forth as be map let it.

7. And if he may not let it, he thall make knowledge thereof clearly and ex-

prelly to the King with his true device and counsell.

8. And he thall doe and purchase the Kings profit in all that he may reaso nably doe: which in effect agreeth with the oath of the Lord Chanceloz, as you may read ubi fupra.

ofthis Court. Kor. Par. 13 R. 2. nu.6 & 7.

Vide Rot. Par. 13 E.3.part.1. for this office. * Marh. Paris 18 H.z.pa.391. & 19 H.3. anno Dom. 1234. And so was Tho. Wimondham, anno dom. 1258. 50 H.z.

Rot. brevium. 20 E.z. a Arch bishop Treasurer of the Exchequer. b Notaindicto Scaccario. cUnder-treasurer. dTreasurership of the Exchequer granted by Letters Patents.

Custosregni.

Vid. The Lord Chancelors oath in the Chapter of the Chancery.

" Lain is an old French word, to hide.

Vid.Ror. Carra-

rum anno 17 H.3.

Hillas El. Cora

Note the statute

Speaketh of the

Chancelor and

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Par. 8 E.3 nu 40. &c. Vid.1 R.2. nu. Sir William de la Pools case. Mich. 33 &

34 E.1. Coram Rogero de Hegham & alis Ju-Miciariis, &c.

Cap.11. Imprimis post figillationem patentium de illo officio vocetur in cur' Can- Forma constitucellariz, coram domino Cancellario genibus flexis facit facramentum, ut fuperius scribitur, & deinde sigillatum erit breve regis directum Baronibus & Camerariis de Scaccario de attendenc' recitans effectum dictarum literarum patentium. Et inde recesserit dictus dominus Cancellarius ad Curiam Scaccarii & ibidem (dicto Thesaurario stante) ad barram legantur litera Patentes pradict & similiter prædictum bre, & vocatus est idem Thesaurarius ad locum suum per dicum dominum Cancellarium accipiens cessum, & liberatæ erunt tune & ibidem claves officii Thesaurarii, & omnes officiarii sub se recedent cum ipso Thesaurario in Thesaurum & dantes ei attendene' This we have transcribed de verbo in

verbum in eitdem verbis. The Lord Treasurer of England bath also granted to him by Letters Batents under the Breat Seal, Thefaurariam scaccarii regis Anglia, which of ancie ent time was a diffind office by it felf. The office of the Treasurer of the erchequer did principally take care of the green war, fees, and tenures, as it is faid; be bath also with the Barons the cultody of records, as by the infu-

ing record appears.

In an Information of intrusion in the Erchequer against Brace, judgment was given for the Queen against Brace, who brought a writ of Great directed to the Lord Chancelog and Lord Treasurer, and they made a warrant under their feals to the Barons to bring the record before them. And Manwood Thief Baron objected against both the wait and the warrant, for that the statute of 31 E.3.c.12. that giveth this wait of Erroz is generall, that the Lozd Chanceloz and Lozd Treasurer thall cause to come before them the record and processe of the Ercheaper, and in as much as no speciall writ was given by the Catute, therefore the writ ought to be directed to them that have the keeping of the record according to the course of the Common law. * And for that the Treasurer of the Cr. chequer and Barons have the keeping of the Records of the Erchequer, the mit of Erroz ought to have been directed to them, and that the Lord Chances Scelib. I.fo. IT. la and Lord Treasurer of England are Judges in this case, and not the Treas hams cafe. firer of the Erchequer. And upon fearth of prefidents all the writs of Error from the making of the flatute untill , Eliz. were directed to the Treasurer of clearly appeareth the Erchequer, and Barons to bying the Record before the Lord Chancelor that the Treasurer and Barons and Lord Treasurer: but in 7 El. and divers write since have been directed as of the Exchequer this writ was, ic. But it was refolved by the Lord Thancelor, Lord Treasuare keepers of rer, and the two Chief Justices Assistants, that the writ ought to be directed to the records judithe Treasurer of the Erchequer and Barons that have the Record in their cuciall of the Exfood according to the ancient course and presidents, and thereupon this writ chequer. Vide

Here Fourthings are to be observed. 1. That albeit the Barons, as bath been faid, are the fole Audges, pet the Areafurer of the Erchequer is jopned with them in keeping of the Records, whereof the Barons are Judges, for they are parcell of the Kings Treasure. 2. That with of Error are to be directed to them that have the enclody of the Record wherein any judgment is given; as a wait of Error to reverse a judgment in the Court of Common Pleas, hall be directed to the Chief Instice only who hath the custody of the body of the Record wherein the judgment to given, but the originall writ and warrant of Atturny are not in his custody. 3. That albeit the Lord Treasurer is also Treasurer of the Erchequer, pet the wait of Erroz is directed to him as Treas furer of the Erchequer, and the Barons, to have the Record before himfelf as Treasurer of England & the Chancelog. 4. That at the making of the flatute of 31 E. 3. that giveth the wait of @rroz, the offices of Treafurer of England and the Treasurer of the Erchequer were inseverall hands, as by the write of Error brought foon after appeareth. Before the faid fatute of 31 E.3. the Erross in the Exchequer were fometimes examined in Parliament, and fometimes before Commissioners by force of the Kings writ under the Breat Seal.

It was petitioned in Parliament in 22 E.3.nu,25. that erroneous judgments

tionis Thefaurani

in the Erchequer might be reverled in the Kings Bench, but it succeeded not Vide Term. Pasch 14 E. 3. a Warit directed to the Areasurer and Barons calling to them such Instices as they should think fit, to examine the Record, to of the judgement in the Erchequer, 4c. so, the Jountesse of Kent against the Abbot of Ramsey, upon which judgement the Abbot brought his Writ of Erro, Fixherbert so, another purpose abridgeth the case, Tic. Scire fac. 122,

Hil. 11 E. 3. in libro rubeo in Scaccario fo. 322. the case of Iohn de Lecestre Chamberlaine of the Erchequer, a notable president to the like effect. Lege, quia

optime.

Nota in the Act of 31 E. 3. that is called the Councell Chamber, which now is called the Orchequer Chamber, because there was the assembly of all the Audges

being the kings Councell for Deciding of matters in law,

The Chamberlaines of the Exchequer. For these officers see in the first part of the Inst. lib.2. cap. Grand' Serjeanty. Sect. 153. the office mentioned in the Letters patents is. Officiu unius Camerarioru de Recept' Scaccarii, sive officiu unius Camerariorum de Scaccario, & is granted so, term of life to be exercised by him or his Deputy. To this Office belong the office of one of the Dozekeepers of the Receipt.

Contrarotulator. Of so great regard is the right use of the Pipe, as there is a Controller thereof, which no other Office in this Court hath. And the

Thancelour of the Erchequer is the Controller of the Dive.

Rememeratores, z. viz Regis, Thefaurarii, & Primorum frucuum.

delicus Pipe. Of this Officer somewhat is necessary to be said. The original institution of this Court was taken from a Conduit or conveyances water into a Cisterne: so, as water is conveyed from many Fountains and Springs by a Pipe into a Cisterne of a house, and from thence into the several offices of the same: so this golden and silver streame is dratume from several Courts as sountains of justice, and other springs of revenue reduced and collected into one Pipe, and by that conveyed into the Cistern of his Pajestics Receipt, sc. Therefore all accounts and debts to the King are delivered and collected ont of the offices of the Kings Remembrancer, and Treasurers Remembrancer, c. and dratum down sput in charge in the Pipe. So as whatsoever is in charge in this Roll or Pipe, is said in law to be duly in charge. The Clerk of the Pipe in the Patent of his office, is called Ingrossator magnikor, in Scaccario.

Also the Treasurers Remembrancer is by his office to charge and enter from the Driginal into the Annual, otherwise called the Dreat Roll, all see same rents and other rents whatsoever upon leases of lands within the survey of this Court: and whatsoever is in charge in this Roll is said to be duly in charge. Also he ought to keep another Roll, commonly called a Roll of reversions, as of grants of lands and offices in taile, so, like or years absque compose, aut aliquid inde reddende, to the end, as often as need thall require, Warits may be

granted to enquire whether the iffine be frent, the leffee dead, ac.

There be five Anditors of the kings revenues within the survey of this Court, and their office is to take the accounts of the kings Receivers, Sheriffs, Escheators, Collegors, and Customers, and so audite and perfect them. But an Auditor cannot allow any license or grant, sorthe Auditor knoweth not subster the license or grant be good or no: but upon petition it ought to be allowed by the Barons who know the Law, & sic de similibus. Petither can the Auditor put any thing in charge, sorthis office is (as hath been said) but to take and audite accounts: sorthe knows of his Patent be, Concessimus B. officium unius Auditorum Scaccarii nostri quod I. S. super habuir & occupavit: Habendum & tenendum prædictum officium præfato B. quam diu se bene gesserit in eodem per se vel sufficient deput som. Pay, though the Barons do order upon sight of any Rescord or evidence, that any thing shall be put in charge, this is used to be done to bring it in question, but it is not in law accounted to be duly in charge (until it be recovered, received, and accounted sorthe sevence), sorther successive of the successive of the publicially

r part of the Inflitutes, cap. Grand Serjanty, scal 153.

See the flat. of 5 R. 2.c. 14. flat. 1 26 All. p. 60. Duly in charge.

The Annuel or great Roll.

Duly in charge. The Roll of 1evenues.

5 Auditors. 1 H.7.4.2. 7 El.Dier 238.b. Sir Rich, Lees cafe.

Quamdin se bene gesserit. Done, because it may be bone in the absence of the party. Peither can any Audito make a Super, but of that that hath been received and accounted for before.

Auditor of the Preft s take and audits the accounts of Ireland, Bartwick,

the Wint, and of any money impretted to any man.

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Auditor of the Receipts. First, he is a kinde of filacer, for he fleth the Cellers bils and entreth them. Secondly, be is a Remembrancer, for be gibeth to the Lord Treasurer a Tertificate of the money received the week before. Thirdly, be is an Audito; for be maketh Debentures to every Teller before they pay any money, and taketh and auditeth their Accounts. Befides all thefe he keepeth the Black book of receipts and the Lord Treaturers key of the Treat fury, and feeth every Tellers money locked up in the new Treafurp.

Forinfec' Oppositor, the Fozein Dppofer, he both oppose all Sheriffes and Green wax. Bailiffs of Liberties of their green war: Under thele woods [Green wax] are in: cluded Fines, Illues, and Amerciaments, Recognizances for the peace, Recognisances for appearance in any other Court, and good behaviour, and fuch like incertainties certified in feverall Streats into the office of the Lord Treafurers Remembrancer, who delivereth the same to the Clerk of the Extreats to be put into Proces. And because the Extreats annexed to the Wirit are under a Seale in green war, they are bulgarly called Ozcentvar. But Felons goods, Waifes. Strapes, Dutlatues goods, Deodands, and fuch like, are within the Sheriffes accounts, with which the Escheator was wont to deale.

Clericus extractorum, Clerk of the Extreats, his office is partly touched before.

Here it may be demanded what the meaning of these toogds (of Effrents that 4 H.f. cap. 2. fowne not) is. The Act of 4 H. 5. cap. 2, being originall in french, is in proprio idiomate. Des Estreats nient sevvenn, which by turning the two finale v v into a w mas first made fowns, and afterwards fowne. Let forvens property fignifieth to be remembred, and fuch cafualties, as are not to be remembred run not in demand, that is, are not leviable.

Clerieus Nihilorum maketh a Roll of all fuch frammes as the Sheriffe mon Broces for the Oreenway retorn Nihil, and delibereth that Moll into the office Rotel verlinem of the Nozd Areafurers Remembrancer to have erecution done of it for the hing. See the fratute of 5 R. s. cap. 13, far, 1, concerning theferetoins of Nihil and the discharge thereof.

I Clericus Placitorum, Clerk of the Pleas. In this mans office all the offiters and priviledged persons in this Court are to sue and be sued. Of this mat-

ter moze hereafter.

Mareschalles, Marthall. To this Difficer the Court committeth the keep. Stat.de 51 H. 2. ing of the Kings Debtoes during the Atting of the Term to the end they may pro- flatures. vide to pay the Kings debts, or elfe to be further imprisoned. Such Offices as are found Virtue officii, and brought into the Erchequer, are belivered to bim, to be delibered over to the Lood Treasurers Remembrancer. De also appointeth Auditors to Sheriffs, Eschentors, Cuffomers, and Colledors for taking their accounts.

Clericus Summonicionum, Clerk of the Summons.

Deputati Camerarii duo, called Under chamberlains of the Erchequer : they cleave the Tallies written by the Clerk of the Tallies, and reads the fame, that the Clerk of the Pell and the Controllers thereof may fee their entries be true: they also fearth for all Records in the Areasury.

Secundarii Rememoratoris regis duo.

Secundarii Rememoratoris Thefaurarii duo,

Secundarii Pipa duo.

In the other part of the Exchequer which is called the Receipt. Concerning Roc.clauf. 39 E.3 the course of the Receipt of the Erchequer, fee Rot. Clauf. 19 E. 3. m. 16.

The two Chamberlaines, Df the butp of thete Dfficers fee in the firft part of the Inititutes. Vide 51 H. 3. flat. 5. 14 E.3. cap. 14.

Clericus Talliarum. There be two kind of Tailes of Tallies , the one is

42 E. 3.Cap.g. 7 H.4. cap 3.

See the flat, of

memb. 26. First part of the Inflit. Scat. 153.

Cap. II.

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a 1 R 2. cap.5. b 27 H.8.ca-11. 31 H.8.cap.16. 2 E.6. cap.4.

Parl. 5 R. 2. ca.16.

Vid. in the Of-

fire of the Kings

Remembrancer.

Mich. 26 H. 6.

Kings Rememb-

Rot.46. The duties of the

rancer.

ftat.I.

called a Talley of a debt, and the other is called a Tally of b reward; of both which you may read in divers Acts of Parliament.

T Clericus Pellis, Clerk of the Pele. Dis duty is to enter every Tellers bill into a Roll, called Pellis receptorum. Dis duty also is to enter in another Roll payments called Pellis exicus; and by what Warrant the payment was made.

I Numeratores, 4 Tellers. The office of a Teller conflict in four duties.

1. To receive monies due to the King. 2. To give to the Clerk pellis receptor a bill thereof, inhereby he may be charged. 3. To pay to all persons monies by Warrant of the Auditoz of the Receipt. 4. They make yearly and weekly books of their receipts and payments, which they deliver to the Lozd Treaturer.

- Tunctores talliorum duo.
- T Deputati Camerarii duo.
- Custos Thesauria.
- Tabellarii Ordinarii 4.
- Scribæ dao.

5 R. 2, cap. 14, ftat. 1.

9 Officiarii Decimarum & Primitiarum.

By the statute of 5 R, 2. for making a Commission in the Exchaquer the Clerk shall not take for his fee above 2 s. only; nor for a Record of Nii prins with the Watt but 2 s, only, as afore this time was wont to be done and used.

See in the end of a book containing many little books, as Firzherberts Juffice of Peace, Carra Feod', &c. the fees of the Officers of the Erchequer.

But it hall be necessary to set down the duties of the Kings Remembrancer, and of the Lord Areasurers Remembrancer.

The office of the kings Remembrancer confifteth principally in eight duties. His first is to write Process against Collectors of Customes, Subsidies, and Fifteens. 2. He entreth in his Office all Recognizances before the Barons, and taketh bonds for any of the kings debts, for observing of orders, or for appearances, and his duty is to make out Process upon every of them. 3. He maketh Process upon Informations upon penall statutes, all which Informations are entred in his office. 4. He maketh wils of composition upon informations upon penall statutes. 5. He taketh the stalment of debts and entreth them. 6. The Clerk of the Starchamber certifieth into his office the fines set in the Star-chamber; this officer maketh a Record thereof, and draweth them down into the Pipe. 7. Into this office ought to be delivered to be safely kept, all Affirmances, Conveyances, and Evidences, whereby any Lands, Tenements, Percoitaments, 01 other things are granted to the king. 8. Also there is a Court of Equity holden in the Erchequer Thamber by English bill: all the Wils and proceedings thereupon are entred in the office of this officer. See the statute of

The duties of the Lord Treasurers Remembrancer.

See hereafter in the Chapter of the Court of Wards. I R.2.cap.5.

The office of the Lord Treasurers Remembrancer principally consisteth in eight duties. 1. Dis duty is to prefer be the broad-fpreading and fruitfull tree of Tenures so many wayes beneficiall to the Crown, and the jurisdiction of the Court of Wards, which sometimes were within the survey of this Court, but fince taken from it. De maketh out Proces for the Bings revenue by reason of the tenures of the King (Wards excepted.) 2. He maketh Proces of Fieri fac' and Extent for debts due to the King either in the Dipe, or with the Auditors. If a Clerk of this Court make any Warit of Wooces for a debt which bath been paid and the Tallies thereof joyned and allowed, he thall lose his office, and be imprisoned until he hath satisfied the party so much as by the discretion of the Treasurer and Barons he is endamaged. 3. He maketh Pocces against all Sheriffs, Cicheators, Receivers, and Bapliffs, to bring them to account. 4. To make an entry of Record, whereby it appeareth whether Sheriffs and o ther Accountants pay their proffers due at Cafter and Dichaelmas. 5. He maketh another Entry of Record, to the end it may be known whether Sheriffs and other Accountants keep their dayes of prefirion. 6. The Breen-war is certified into his office, and are by him delibered to the Clerk of the Efreats, as

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both been faid. 7. There ought to be brought into this Diffice all the accounts of Luttomers, Controllers, and all other accounts, to make thereof in this Df. fream entry of Record, to aboid all delay and concealment in the kings bulines.

8, See the fatute of 5 R. 2, cap, 14. ftar. 1.

Concerning these Difficers there is an excellent law made in 5 R.2. whereby it is enacted, That from henceforth no Baron of the Erchequer, Clerk of the Dive, Remembrancer, Dppofer, Controller, Clerk of the Pleas, and Clerk of the Forein fummons, Auditor, or other chief Dfficer of the Erchequer be made. mielle he be well learned in the Law, or otherwise very skilfull in the courses and ulages of the Erchequer. Here is the heartstring of this Court, for albeit the laives and orders thereof be most excellent, get the benefit thereof confist in good and skilfull Dfficers and Minifters.

Thefe things being underftood, let us now perufe our ancient Authors; for

out of the old fields must come the new come.

Event nous Treasorers. Dereby it appeareth being in the Plurall number, that there be two Treasurers, whereof we have spoken before. There is also a Treasurer of the Bings Chamber , Thefaurarius Camera Regis , which is not accountable in the Erchequer, but to the King himfelf. If the King appoint fome whom he trufts to take his account, this is effected to be done by the king

bimself, Qui per alium facit, per ipsum facere videtur.

Et pous Barons illonques jurisdiction. All judiciall proceedings according to law in the Orchequer, are coram Baronibus, a not cora Thefaurario & Baronibus : But the Court of Equity holden in the Erchequer Chamber, is holden before the Lord Treasurer, Chanceloz, and Barons. Df this Court we have given a Exchequer, touth before, and wall treat more hereafter. Pote the judiciall proceed: Chamber, ings before the Barons are in Rols; but they are not numbred as in other See hereafter.

Courts.

The Dath of the Barons of the Erchequer expeding their duties confifeth monten Articles. 1. That well and truly he thall ferbe in the Office of Baron of the Kings Erchequer. 2. That truly he thall charge & discharge all manner of people, as well poor as rich. 3. That for highnette nor for riches, nor for has See the flature of tredino; estate of no manner of person of persons, not for any deed, gift, not promile of any person the tubich is made to him, noz by craft, noz by ingen be chall let the Kings right. 4. Por none other persons right he thall disturbe, let or respite contrary to the lawes of the land. 5. Por the Kings debts he Chall put in relpite, where that they may goodly be levied. 6. That the kings need be thall fpeet before all others. 7. That neither for gift, wages, nor good deed, be thall lapne, disturbe, not let the profit of reasonable advantage of the King in the advantage of any other person, not of himself. 8. That nothing he shall take of any person for to do wrong or right, to delay or to deliver, or to delay the people that have to doe before him; but as haltily as he may them goodly to deltber without hurt of the King, and having no regard to any profit that might thereof to him be therein, he chall make to be delivered. 9. Where he may know any wrong or prejudice to be done to the King, he thall put and do all his power and diligence that to reducte, and if he may not do it, that he tell it to the king; of to them of his councell, which may make relation to the King, if he may not come to him. 10. The Kings Councell he thall keep and layne in all things.

In the Erchequer at the fuit of the bing in an Information of intrusion of Triallby Record. lands, wherein issue is jouned, which may be tried by the Country; yet where the hing bath a direct Record or Records for the manifestation of his title, the Kings Attorny map pray that the triall may be by Records, whereof you may reade a notable case, Mic. 27. & 28 Eliz. in the Erchequer where the case was, That in an Mic. 27 & 28 El. Information of intrusion into certain lands, ec. against Savil, the issue was whether certain lands belonged to a house of no, and upon a tryall by Record sudgement was given against Savil. Afterwards Savil the defendant died, and his some and heir brought a Whrit of Error in the Erchequer Thamber, where it was holden, that this kinde of tryall by Records was before the statute of 33 H.6.19.51,52

Rot. Parl. c R 2. nu.105. and worthy to be printed.

Rot.Parl.3 H.6. nu. 47.

28 H 6.11,12. 5 H. s.ca.g. flat. 1 20 E.z.cap. 2. The Court of Equity in the cap.13. pag.118. Rols not numbred. The Oath of the Berons. 20 E.3.cap.z.

Layne, i. to conceale or hide.

in Scaccar, inter leroigne & Savil.

all manner of Suits, Bils, Plaints, Informations, &c. and Iffues in the Court of

For triall by Records, vid. Mich. 31 & 33 E. 1. COram Rege. Robertus Archiep. Cant. &c. Hil. 8 E.z. coram Rege, Cornwall. Walterus Episc. Exon.&c.

22 I.3.nu.17.

51 E.3. nu. 27.

5 R.z. cap.9. Course of the Exchequer against law, &c.

" That is, by his Attorny: and therefore the admittance of an Attorny in these cases, is not ex gratia curie (as is faid in the common pleading) but ex debito juftitia.

a Tempore regis Iohannis, the Abbot of Crowlands cafe.

Iufticiarii hac audientes surgentes de Banco, cum Ba-

Iuftic' Itinerantibus apud Turrim London. An. 4 E. 1. Rot. Clauf. 13 E. 1. infra p. 121. Hil. 32 E. 1. Coram Rege Wgwa. Mic. 6 E. 2. in Communi Basto Despencers case. Mic. 11 E. 2. Coram Rige case of the Bus gelles of Great Yarmouth.

4 H.6 12. b. 5 E.4.7. 7 E.4.14.b. 16.b

Exchequer, shall be made and tried by due examination of Witnesse, Writing, Proofes, or by fuch other wayes or means, as by the Court of Exchequer shall be thought expedient; and that every such Judgement, Decree or Decrees, shall be good, perfect, and in full strength, force, and effect in law, to all intents, constructions, and purposes. And yet, not with franding the generality of these woods, if a Judgement be giben upon a triall by Record, a Warit of Error both le there upon : because, as to that point, this Act is but in affirmance of the Common Law. It was petitioned in Parliament, that remedy might be found, that no Ac

countant in the Erchequer do run in iffues befoze be be warned. The Bings an fwer was , The Proces therein shall be first a Venire fac', then a Diffring as, and after a Writ out of the Chancery to the Treasurer and Barons.

It was also petitioned in Parliament, that such as owe to the Bing mapup on their account be allowed of all fuch lones, as be due unto them, of to any of his Ancestors: whereunto the Bing answered, The Treasurer and Barons shall make allowance of due debts.

So great care was taken by the Court of Erchequer (which is the centre of the Kings revenue and profit) that no man might fue or plead for their difcharge of any debts, account, or other demand, without having express commandement by Warit of Letter of the Great Seal. But by the Catute of 5 R.2. it appeared, that the parties ought to have been received thereunto, according to the Law. without any fuch Writ of Letter: and that the obtaining of fuch Writs of Letters was to the great disquietnesse, mischiefe, and delay of the parties in peached, and no advantage to the King. And where before that time no plea could be allowed in the Erchequer by Attorny, but in proper person: by the sam At it is ordained that the Barons of the Erchequer that have full power to hear every answer of every demand made in the same : fo that every person that is impeached or impeachable of any cante by himfelf or by any perfon, thall be received bed in the Exchequer, to plead, fue, and have his reasonable discharge without carrying or fuing any Writ or other commandement whatfoeber. So as by this Ad both these mischiefs are provided for. And out of this Act this general conclusion map be justly collected, that fuch course of the Erchequer as tendeth to the disquietnesse, mischiefe, and belay of the Subject, and no advantage to the King, is again alw, and ought not to be allowed. And it is to be observed, that Briccon both joyn in this clause, the Treasurers and Barons.

adjourned and there debated, argued, and refolved by all the Judges of England and Barons of the Erchequer. See moze of this Court infra, cap. 13. pagin. ronibus Scaccarii & domini regis fidelibus illic refidentibus colloquit, &c. Rot, in Scaccario de Crowland. Pl. Corone crem

in the Bings Bench or Common Pleas, ac. are, and of ancient time babe been

2 And into the Erchequer Chamber of the like, all cases of greatest difficulty

A Oier & Terminer touts les causes que touchont nous debts. Here Debts are taken for all manner of duties due to the Bing.

TEt auxi a nous fees. Here the tenures of the Bing (whereof we have fooks) before) are expressed. And albeit there be many tenures of the Bing both in Capice, and by Unights Service of some Hono; or Panno, ec. pet there be many more by the error or negligence of Sollicitors, by fuing out of licences or parbons of alienation, where in troth the mannous or lands were not bolden of the Bing in Capite.

But Mich. 39 & 40 Eliz. it was refolved by all the Judges of England, when I was Attorny Benerall: That if a man purchase a License of Pardon, and after

Mich. 39 & 40 El. Per touts les 111-Staces.

after being called into the Erchequer do plead the license or pardon, that neither the purchase not pleading is any conclusion, but the tenure may afterwards upon another alienation be traversed or denied. For the words of the license or parpon be, Que de nobis tenentur.in.capite. (ut dicitur;) for neither the charge in this cale is direct being grounded upon a license or pardon, nor the pleastor the license or pardon is pleaded, as it is, or dicitur: and therefore neither the one nor the other both conclude. But if he in his plea both by expresse words (with a bene & verum eft, &c.) confeste a tenure, in Capite, and in discharge thereof plead the pardon of license in discharge thereof, there is a conclusion wrought: and so are the books to be intended: which resolution I heard and observed, and have reported it for advancement of truth and right.

Concerning licenses of altenation, and the thort pleading of licenses and pardons, there is a profitable fratute made Anno 18 Jac. Regis, and another Anno 1 Jac. Reg. ca. 26:

1 Jac. cap. 26. concerning orders of the Erchequer.

Et les incident choses sauns les queux, &c. Quando lex aliquid alicui conce-

dit, concedere videtur & id fine quo res ipfa effe non poteft.

Et que ils eyent power a conuster des detts que lendoit a nous dettors per ou 20 E-3.ley 52. nous puisons pluis tost approcher a nostre dett. This is the antient prerogative of 8 H.5.4.

the King as it appeareth in our books.

The King brought an action of debt in this Court again a Prior Alien The 38 Aff. p. 20. Prior had Proces against A who deteined goods from him. without which he could not answer the Bing. A came and claimed the goods as his tithes as Warfon of D, the Pzioz claimed the tithes as Parlon of S; and thereupon iffue tahen for the King triable in the Erchequer.

If he that is in execution will in this Court confesse himself debto; to the king, where he is no debtor of Record, he chall be remanded to the first prison, and after the creditor be fatisfied, then to be committed to the fleet untill be

hath paid the fumme confessed.

Solong; le discretion des Treasorers & Barons, &c. soients arents a searme a eax que pluis voillent doner. To the end that no lands in the kings hands, which ought to be to the Kings profit, hould be without a Farmor that Chould peild a rent to the King, the Areafurer in certain cases, and with certain cautione ought to make a Warrant to the Great Seal for Demiling thereof, that is to lay, not only of lands extended, of lands during the vacation of any Abbey, and oflands feifed for an alienation without license, and before 23 H. 8, of land in ward, or the like upon uncertainties, but also of the demeans of the Crown out

The lease will be best expressed by an example, first of lands extended. Rex omnibusiad quos, &c. Salutem, Sciatis quod per manucaptionem Walteri Mathew de Westm' in Com' Mid. Yeoman,& Nich. Whitseild de eadem, Yeoman.Commisimus Rico Foster, custodiam unius shopæ, 30 acr' terræ, 3 acr' prati, & 4 acr' paftpræ cum pertin' in Stanford in com'Lincoln, quæ fuerunt Silvani Southorpe, que in manus Regis Edwardi nuper Regis Anglia terrii pro 138 li. 6 s. 8 d. in quibus idem Silvanus prefato nuper regi tenebat', seifiti fuerunt, & in manibus nostris ea de causa adhuc existunt. Habendu à festo Sancti Michaelis Anno regni nostri 13 usque finem 10 annorum ex tunc proxime sequen' & plenarie complendorum. Reddendo inde nobis per annum in custodia prædicta 25 s, prout nobis responsum est, ad festa Pascha, & Sancti Michael per aquales portiones. Proviso semper quod si aliquis alius dare voluerit de incremento per annum pro custodia pradicta fine fraude vel malo ingenio, quod tune dictus Richardus tantum pro eadem solvere reneatur, si custodiam pradictam habere voluerit. In enjus rei, &c. Tefte R. apud Westm. 7 die Novemb. Anno regni nostri decimo sexto.

Pote by many presidents the Lord Treasurer may make a Warrant to grant the lands extended, either for years, or quam diu in manibus postris fore con-

tigerit.

The Lord Treasurer made a Warrant to the Lord Chancelour to demise to Ror.par. 5 H.6. John Pempons land parcell of the Dutchy of Tounwall for the tearm of fifteen

46 E. 3.33.. 29 All. 38. 7 E.6. Efloppel. Br.222.pl.com.

18 Jac. cap.

1 R. 2.cap. 12.

In Original. Anno 16 E.4. Rot-13. Nota herein five things. 1. Per manucaptionem. 2. Commisimus. 3. Cuftodiam. 4. Yeilding a s. Provife, quad si quis alius plus dare volucrit. Nota Britton Sup. A eux que pluis voilent doner See 27 H.8. cap.

11 H.6.28.b. 8 H.6.34 Br. Leafe 71. Register 295. See for this word Commisimus, Vide 27 H.8. ca. 1. a speciall Proviso for the Lo. Treasurer. 32 H.6.ca.5. 17 R.2.cap. 5. 4 H.4.cap 18. Dier fo.303.

See in the Chapter ot the Court of Wards. *Vid.Pl.Co.491. * Hil. 18 E. 1. f.g. nu.128.

Second part of Cart. Vid, Supra cap. Parl.p.29.

Mirror. Ockham.

2 E.3.25. Rot. Par. 31 E.1. m. 12. Dorf.

Nora, the robbery of the King of his treasure is damnum ineftimabile.

a 2 E.3.25. Jeffery Sharlags cafe. 14 E.3.tit.Scire. fac' 122. 44 E.3. 27. Regist. 187.b. Probicit.38 aff. p. 20. Rot. Par. 1 R. 2,nu.64. 2 H.4.11. Rot.Par. 2 H.4. 101. Dat' cft no. bis intelligi. Rot.Par.11 H.4. 54. 56. 64.ibid. 13 H-4-32. 8 H.5.Ley 66. 20 E.3.Ley 52. 32 H.6.24. 5 E.4. 4.b. 7 E. 4. 30.

pears in the like form of words as the before recited Leafe was. This Leafe was pleaded in 11 H.6, and though the leafe was by the words of Commissions, and Commissions custodiam terra. &c. yet in pleading the Lettee pleaded a de: mife of the land it felf, and there allowed to be good, which is worthy of oh ferbation.

Vide in Original'in Scaccario de Anno 21 & 22 H.7. Rot.4. & ibid. 23 H.7. Rot. 12. many fuch leafes. But of ancient time, as it appearsth by Britton, both the Treasurer and Barons Did Demile. ac. " Letters Patents of the Alnage than passe only by the Lord Areasurers warrant. And the gift of the office of the Escheator belong to his office. Vide in the Chapter of the Court of Cicheator,

1By the statutes of 8 H.6. cap. 16. and 18 H. 6. cap. 6, it appeareth that the Chancelos or Treasurer had power to make leases in certain cases of Wards lands: but that is altered by the fratute of 32 of H. 8. of erection of the Court of Wards. . Bote the flatute of 18 H. 6. ca. 1. extends only to the Bings war. rant, and not to the warrant of the Lord Treasurer.

It is to be observed, that when in any Act of Parliament or other Record the Treasurer is named for Demiling, or other intermedling with any of the kings

Revenue, it is to be intended of the Treasurer of the Erchequer.

De nous customes de quirs & leynes,&c. Withat these customes were apthe Inft. Confir. peareth in the Second part of the Inftitutes, by the statute of Confirmation Cartarum, the last branch, and the Exposition upon the same, whereby it appear reth that the king had no Custome but such as was granted to him by Ages

Parliament.

Leschequer est un place quarre. It is foursquare and the Carpet that some time lav upon it had wrought in it the form of a Theffe board, and thereupon it was called the Erchequer : and about the end of the reign of E. i. this Court was new built, and therefore in 2 E.3. it was called the novel Eschequer, it was new built upon this occasion. Both the parts of the Eschequer were of an ancient building, and weak; Fourscoze and one persons whereof the Abbot of Westing and forty eight of his Monkes were part) brake into the Receipt, and felonioule robbed the Bing of a hundred thousand pounds, ad damnum inaftimabile, faith the Record. All these fourscore and one were indicted of this selong, and committed to the Tower of London, sc. and this was the occasion of the new buils ding of both these parts of the Eschequer.

Qui solement est ordeine pur le prowe le roy. Here is a thoat, but an effe auall description of the jurisdiction of this Court, that is, for the profit of the Bing. This profit is either immediate, or mediate: " Immediate, as of lands, rents, franchifes, hereditaments, debts, duties, accounts, goods, chattels, and other profits, and benefits whatfoever due to the King. b Dediate, as first, the priviledge of the Officers, and * Ministers of the Court: for two things doe principally support the jurisdiction of a Court, viz. the just preservation of the dignity of it, and the due attendance of the Officers and Ministers of the fame to fine and be fued in this Court. 2. By Quo minus. 3. It extendeth(as hath been said) to the debtoz of the Kings debtoz. 4. To prisoners in this Court to be fued here. 5. To accountants that have entred into their account, ercept de Collectors of Diffines, they that not be fued by bils, neither if he be fued in any other Court, thall be have the priviledge of this Court.

Oudeux Chivaliers, & 2 Clerkes, ou 2 homes lettres. 2 Chivaliers be heres after explained. 2 Clerks, ou 2 homes lettres, the one is intended to be the Bas

ron of Courle, the other the Clerk of the Pipe.

72: 4.30.
21 E.4.44,45.&c. 8 H. 6. 34. 36 H. 6. 26. Li. 5. f. 62. action fur le case. 11 H. 7. 26. b Stat. de Rutland.
10 E. 1. Register 187. F. N. B. 90. f. Information de intrusion ou trans. & 217. c. terra taile. Vid. 32 H. 3. cap. 39. 16 Eliz. Diet 328. c 14 E. 3. breve 789. 20 E. 3. Ley 52. 2 H. 4. 9. 8 H. 5. 6. 10. 8 H. 5. Ley 66.
11 H. 7. 26. Pl. Com. 322. Lib. 6. fol. 18. d 1 R. 3. cap. 14. 5 R. 2. cap. 9. stat. 1. the Barons shall hear, &c. without any writzletter or commandment. 4 H. 4. cap. 9. 7 H. 4. cap. 11. concerning Cummissions. 13 Eliz. cap 9. Sewers. 14 E. 3. cap. 12. Weights. 13 R. 2. cap. 2. No recognizance or bond in double.

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De fes fees & franchifes. Of fees, that is tenures, whereof we have froken before. Franchiles, being flowers of the Crown, are noto; tous and known.

Et les Accounts,&ce. All accounts to the laing ought to be made upon oath, and it is best for the laing to have the accounts to be taken in this Court, for accounts taken by Commission are little for the Kings benefit. " The Reeper of e Star, de Rutlad. the Wardlobe is to make his account once in the year in the Erchequer, f Dnce 10 1. in the year the Treasurer of Ireland thall account in the Erchequer of Eng- Ro. par. 21 E.1. land. 3 The accounts of the Erchequer to be more thortly beard, made, and in- g 5 R.2.ca.11. groffed, ec.

h The Treasurers of the Kings Chamber are only accountable to the King, b Rot. Par. 3 H.6. and not in this Court of Erchequer, but yet the king, by the advice of some nu.47. whom he may trult in fecret both take account thereof, as before is faid.

Vide recordum & processium contra Petrum de Rivalles alias Petrum de 18 H.3.111,110. Oriall, Thefaurarium & Camerarium Regis totius Anglia & Hibernia, & custodem omnium forestarum, & omnium portuum maris de compoto reddit' de officiis prædictis,& de judicio contra ipsum reddito per defaltam, quia venireremayit, nisi salvo regis conductu, quod rex denegavit, quasi insolitum & indebi-

Per le view de un Soveraign que est Treasurer Dengliterre. Dithis great Officer we have spoken before.

Le 2 Chivaliers soloient ee 2 Barons, &c. And herewith agreeth Bracton, Co. mites vero vel Barones non funt amerciandi, nifi per pares suos secundum modu delicti, & hoc per Barones de Scaccario vel coram rege.

En eel place font auxi Chamberleins, & plufors auters ministers, que ne touch

my molt a la ley. Hereof we have spoken before.

Nul Common plea ne soit disormes tenus in Leschequer enconter le form del Grand Charter. Upon this Act Four severall opinions have been concetted. * 1. That this Court might originally have holden plea of all Common pleas; and this they think to prove by the title of Glanvils book, tobich taking it altogether is this. Tractatus de legibus, &c. tempore Henrici 2, compofins, justicia gubernacula tenente illustri viro Ranulpho de Glanvilla, juris regni & apriquarum consuetudinum eo tempore peritissimo, & illas solum leges continet & consuetudines, secundum quas placitatur incuria regis ad Seaccarium coram Justiciis ubicunque fuerint. 2. Dthers think that at the making of Magna Carra, the Court of, the Erchequer was parcel of the Itings Bench, which they infer upon the words of this Ad. No Common plea shall be holden in the Eschequer against the great Charter, In which Charter Curia noftra is only intended of the Kings Bench. 3. That in Magna Carra, to which this fratute reters, there is no restraint, and therefore this statute of Arrie' fuper Carras refraineth not. 4. That the Dadinance of Rutland is no statute, but made by the king for the order of this Court. In the Second part of the Institutes, in the Erposition of Magna Carra, cap. 11. we have spoken nothing of this matter, but thought good to referre it to this Ad being his proper place.

peareth by the faid ancient Anthors, and by the autho-As to the first : the Intitution and jurisdiction of this Court have been rity of our books only for the kings winesse and profit, sc. as both been said. For the Title of Glanvils book: First, it was never of his own making, for he would never have Aben himselse such high and superlative Titles, as Illustriviro juris regni, &c. cotempore peritifimo. 2. We that added the title speaketh of three Courts, viz. 1, In Curia Regis. 2. Ad Scacearium. 3. Coram Justiciis ubicunque fuerint. For the firth viz, in Curia Regis, he intendeth Justice in Eire, &c. for erample, Inquirentur purprestura vel in Capitali Curia, vel Coram Justiciis Regis Glanv.lib.9. ad tales Inquifitiones faciend' in diverfos regni partes transmissas per Jurata pa- cap. 11.&c. trix five vicenet'. 2. Ad Scacearium, this Court he both mention but once (that remember) in all his book in these words. Si vero dominus Rex aliquam custodiam alicui commiserit, tunc distinguiter utrum ei custodiam pleno jure commileric ita quod nullum eum inde reddere compotum oporteat ad Scaccarium,

Bracton lib.3. fo.116.b. See the 2.part of the Inft. Mag. Cart.ca.14.

Artic, Sup. Cart. libi Supra. Stat. de Rotland. 10 F.1.acc. Pl.Com. 209.

Lib.7 £20, 10.

which agreeth with the originall institution and jurisdiction of the Court concerning the profit of the Ling. 3. Coram Juflieirs ubicunque fuerint is the Bings Bench , whereof Glanvil was Chief Juffice , and of the Pleas in that

Court is in effect the fum of his Treatife.

As to the fecond : 1. Glanvile who waote in the reign of H. 2. Doth (as bath been faid) name the Erchequer as a diffind Court for the accounts to be made to the Bing. 2. In the * Black Book of the Erchequer dedicated to H. 2. of the ob. ferbations of the Erchequer, it is faid, Nulli licer flatura Scaccarii infringere, vel eis quavis temeritate refistere, haber in hoc commune cum ipsa Domini Regis Curia, in qua iple in propria persona jura discernit, nec recordationi nec sententiz in eo lata liceat alicui contradicere. Whereby it appears that the kings bench and Erchequer were diffind Courts in the reign of H. 2.

To the third, our fatute is intituled Articuli fuper Cart', that is, Articles me on Magna Carta & Carta de Foresta : so as the sense of this At is, that the @r. chequer thould hold no common plea no moze then the Kings bench: for the form of the Breat Charter is, Quod communia placita non fequantur Curiam noftram. Secondly, our fatute is but an affirmance of the Common law concerning the furifdiction of this Court, and this doth erprelly and notably appear in the Rec gitter in thefe wurds. Rex Thefaurar' & Baronibus de Scaccario Salutem Cum secundum legem& consuetudinem regni nostri communia placita coram vobisad Scaccarium pradict' placitari non debeant, nisi placita illa nos vel aliquem ministrorum postrorum ejusdem Scaccarii specialiter tangant, &c. Bere it is to be observed that this writ of prohibition is not grounded upon the statute of Artic fuper Cart' 02 any other fratute, but upon the Common law and customs of the kingdome, which concerning the jurisdiction of this Court doth in omnibus agree with our ancient Authors and year-books, wherein you hall observe m admirable harmony and confent in fo many fuccestions of ages.

This is a flatute proved by the title thereof, and for that it is entred in the Parliament Roll, and in the Register 187. b, it is called Statutum de Roc.

land.

Pow it is good to know, how the law commonly called Respondent superior, holdeth in this Tourt and in other Courts, and first by the Records of this Court,

and then by Ads of Parliament.

Memorand' quod allocuto præfato VVillielmo morantur nuper Vic' superlevatione 40. s, extract' in magno Rotulo de anno 12 in Kanc' sub nomine VVilliam Herlizan unius Coronatorum Com' Kanc' pro falso returno. Idem VVIIlielmus Vic' dic' super sacramentum suum quod præfatus VVillielmus Herlizan non habet terr' vel teñta, bona, seu catalla in balliva sua, nec habuit unde die! denar'levari possint. Et quia ipse Coronator electus erat per Comitatum juxta formam statuti,&c. ita quod in defectu ejusdem Coronator',totus Comitatus ut elector & superior,&c. habeant regi respondere, pracip' nune Vic' quod de terris & tenementis hujusmodi totius comitatus in balliva sua fieri fac' præd'xl.s. & eos habeat hic in Cro clausi Paschæ super prostrum suum regi solvend'. Ad quem diem Vic' non retorn' breve. Ideo sicut alias in Cro Sancti Johan' Baptista. #0 more presidents in the Erchequer of this kind, see Mic. 17 R.2. Rot. Mic. 19 H. 8. Rot. 4. Eborum. Pasch. 30 H. 8. Rot. 30. VViltes'. Mich. 5 E. 6. Rot. 130. &c. Stat. de 5 2 H.3. de Scaccario.

How it holdeth in other Courts. Vid. 11 E. 2. tit. der. 172. where the Box rifs be removable as in London for their infufficiency, respondent superior, that

is, the Paioz and Comminalty of London.

45 E.3.9,10. Prior datise & removeable suster eschape, respondeat superior. 14 E.4. Pur insufficiency del Bailie dun libertie respondeat dominus libertatis Vid. 44 E.3. 13. 50 E.3. 5. 14 H.4. 22. 11H. 6. 52. 30 H.6. 32. VV. 2. cap. 2. Si non habeat Balivus unde reddat, reddat superior.

There is a generall statute concerning all the Courts of the king, wo; thy of observation in these words.

Item, To the intent that better and more fure Government be had

* The Author of this book is Gervalius Tilburienfis a learned man and an Officer of the Exchequer cap.1.

Regist. 187.b.

Stat.de Rotland. 10 E.1. Vid. Pl. Com.221.per 2 Barons. Regist. 187.b. Respondent superior.

Int' Præcept' de Termino San-& Hil. Anno 14 E.z. exparte Remem. Regis Rot g. in Scac' Coronator.

2 H.6, cap.10.

within the Courts of our Lord the King for his profit, and ease of his people, which have to purfue, and doe in the fame. It is ordained and established that all the Officers made by the Kings Letters Patents royall within the faid Courts, which have power and authority by vertue of their offices of old times accustomed, to appoint Clerks and Ministers within the same Courts, shall be charged and sworn to appoint such Clerks and Ministers, for whom they will answer at their perill, which be sufficient, faithfull, and attending to that which pertaineth to them in performance of the businesse, as well of the King, as of his people.

In the same manner we have ordained in the right of the Barons of Hereby it appear the Exchequer, and we have expresly charged them in our presence, resh that to the that they shall doe right and reason to all our subjects, great and small, belongeth doing and that they shall deliver the people reasonably and without delay fon in legall proof the businesse which they have to doe before them, without un- ccedings.

due tarrying as hath been done in times past.

It was resolved in the case of Auditoz Povie, that if A be indebted to B, and s is indebted to the king, that the king by his paerogative may levie his debt mon A: but this levying ought to be of an immediate, and not of a mediate betto: to the debto; of the King. As if A be indebted to B, and B to C, and C to the Bing, the Ling cannot levy his debt of A, for then it might be levied in infi-

mium, quod reprobatur in jure, and this appeareth in our books. for Allignment of debts made to the King, fee in my Reports.

By the flatute of 7 Jac. no debt Chall be assigned to the King his beirs or facefors by or from any debtor or Accountant to his Pajetty, his heirs or fuctellers, other then fuch debts as did before grow due originally to the Bings

Po obligation, recognizance or fratute made for faving harmleffe or performance of Covenants, sc. though it be forfetted. or for any cause, other then a due best, can be affigued to the King by any of his debtors. These affiguments of betts to the King are not favoured in law when the Kings immediate debto; is able to pay his debt; for by the affignment at the things fuit the body, lands and goods of the debtor to the Kings Debtor are liable to the King, whereas at the Subjects fuit, be could have had but his body only by Capias ad fatisfaciend', or his goods only by Fieri fac', or half his lands and goods by Elegic 189 the fratute of 1 R.2. a penalty is provided for him tubo confesseth a debt to the king (that is not bebtoz to the king of recozd) to belay the erecution of others.

The Barons of the Erchequer are the foveraign Auditors of England, for Kaman aftign Auditors to a Bailifor receiver to account, and the Auditors will not allow just and reasonable allowances but committhe Bailif of receiber to prison, such prisoner may have an originall writ of Ex parce calis returnable before the Treasurer and Barons of the Erchequer, ec. for his relief in that be-

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Apon the Accountant in the Erchequer of B. Fulham the Kings Butler, be demanded allowance of certain parcels of wines given by the King to certain persons by word of mouth without writing, and it was disallowed by the rule

Apon the account in the Erchequer of Richard Bury Reeper of the Wards robe, he demanded allowance for certain Hellels of gold and filber, and certain Jewels given by the King ore renus to Isabell Queen of England, and others to Philip Ducen of England Confort of the ling, & non allocatur, by the like rule of the Court: for the gifts by wood in both thefe cafes are boid, which with Petilians case that followeth are good rules to establish the law in a case where. B.61.14 E.4.2.a. in there beth in there hath been variety of opinions in our books,

Mich.13 Ja. In Banke le roy in Probibition. 8 H.5.4. 45 E.3. Decies tantum

Li. f. fo. 89. 99. 7 Jac.cap.15.

1 R. 2. C2. T 2.

Fleta li.6.ca.64. 2 E.3.12.14 E.3. account 74. 8 E.4.16.F.N.B. 129.f.Regist.137.

Rot.Clauf. anno 4 E.3.m.s.

Rot, Clauf, anno 4 E.3.m.19.

ap. II.

Hil, 6 E.4. Rot. 14. in Scaccario Inter Brevia in Dorf. Petilians cafe. A mar. rant under the Signet is not lufficient to illue any Areafure of the Ling out of the Receipt, but it must be under the Breat or Privy Seal.

Regift.192.2.5. & 193.

If the Barons Doe not allow unto an Accountant before them fuch full her mands as he maketh, he may have a writ De allocatione facienda, directed to the Treasurer and Barons, commanding them to allow the same.

of a Liberate for payment of a pension or debt, &c.

A Liberate is an originall writ issuing out of the Chancery, and is directed to fome Officers that have of the Bings mony in his hands to pay over a pen-Kon, debt,02 duty. Andit is not called a Liberate by reason of any such toon contained in the wait, (as for the most part waits are) for the words be Quod folvas or folvatis, but it is fo named ab effectu. But fuch a writ cannot be directed to the Bings Fermo, to pay a pention, tc. because, though the ferm of rent be behind, pet it is not the Bings untill it be paid, and all the write in the Register are directed as is aforefaid to Officers, as to the Treasurer and Chamberlain. to a Customer, sc. The form of the wait appeareth in the Register 192, 193. Am there it appeareth that there be two kinds of waits of Liberace, one doamant or current and continuall, and another hac vice and particular. And it is sometimes accompanied with a wait of Allowance, as there you may read.

If the Officer have sufficient in his hands to payac, at the time of the Liberace delivered to him, he is become debtor (by act of law) to the party, for which he may have an action of debt : but after the Liberare fued out, and before the delivery, the King may discharge the Officer of the Kings money in his hands, And if the Ming decease before the Deliberry of the Liberace, the Officer bath m

warrant to pap it.

If the Officer at the time of the belivery of the Liberare have of the Kings money to pay but part, and not the whole, the writ is no warrant to him to pay part. See 21 H.6. tir, der. 43. 27 H.6. 9. 37 H.6. 24,25. 9 E. 4.12.14. 1 H.7. 8. 2 H.7.9. F.N.B. 121.f. Br. Tit. Taile Deschequer.

Vid. Mag. Cap. 22, Liberatione antiquitus statut', id est, precium antiquitus

flatutum.

The course of the Eschequer is, that as soon as a Sherif or Escheator enter into his account for iffues, amerciaments and mean profits . to mark upon his head O. Ni. which is as much to fap, as Operatur, nisi habeat sufficiente exoperacionem, and presently be is become the kings debtor, and a Deber set upon bis head, and thereupon the parties peravaile are become debtors to the Sherif or

Cicheatoz, and discharged against the Bing.

The ancient course of the Eschequer hath been, that if in an Information of Intrusion into lands or tenements the Defendant plead not quilty, he that lose the possession; and it is said that the reason of this course is, first so, that regularly the Kings title appeareth of the record, and therefore the Defendant may take knowledge thereof, and the rather for that in every Information of intrusion it is specified of whose possessions the lands, sc. were: but if the Defendant plead not guilty, the Kings learned Councell cannot know the Defendants title, to probide to answer the same, as the Defendant may doe to the Lings title.

Dier 7 El 238.

CAP.

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CAP. XII.

A Court to enquire of, and certifie unlawfull and untrue Accounts in the Exchequer.

Dis Court litteth by Commission under the Great Seale by force of the 6 H.4.cap.3. flatute of 6 H.4. Directed and fent, together with the tenour of the account, to the most lawfull and discreet persons in the Counties, where the Accountants be Officers, to enquire and certific the profits which the Sheriffs, Cheators, Alnagers, Controllers, and other the bings Officers have received, Record, ac, by them upon their faid accounts deceitfully concealed, ac. and being attains ted of the faid frauds and deceipts, they thall forfeit treble the value, and their bodies to prison, untill they have made fine and ransome to the king, after the difcretion of the Judges.

But (as hath been faid before) it is certain, that it is ever most for the kings benefit that Accounts be yearly taken in the Erchequer, and not by Commission: and to that end an Dedinance was made in the Parliament holden Anno 21 E.I. in these words: Dominus Rex vult & pracipit, quod de catero singulis annis semel in anno compotus Vasconia & Hibernia per Constabularium Burdegalia,& Thefaurarium Hibernia reddantur ad Seaccarium Anglia, & tbid. audiantur per Thesaurat' & Barones suos. A fortiori of Accounts within the Realm.

And of the Court of the Erchequer we will end with an old Merfe ingraved in fone in the Erchequer wall,

Ingrediens Jani, rediturus es amulus Argi. The Chief Baron is created by Letters Patents, and the Office is granted to him Quamdiu fe bene gefferit, wherein he hath a moze fired effate (it being an effate for life) then the Justices of either Bench, who have their Diffices but at will: And Quamdiu fe bene gesterit must be intended in matters concerning his see Lit. 1 part of Office, and is no more then the law would have implied, if the Office had been the Inflict Sec. granted for life. And in like manner are the reft of the Barons of the Ercheouer constituted, and the Patents of the Attorny Beneralland Solicitor are at-10 Quam din le bene gesserit,

See Rot. Parl. 6 H.4.nu.59. for the print fwar-veth from the

Ror. Parl. Anno 21 E.1.Rot.3. Vide Rot.Parl. 28 E.1. Nich. de Clere Thefaurarius Hiberniz.

CAP. XIII.

The Court of Equity in the Exchequer

He Judges of this Court are the Lozd Treasurer, the Chancelour, and Barons of the Erchequer. Benerally, their jurifdiation is as large in matter of equity, as the Barons in the Court of the Erchequer have by the benefit of the King by the Common law : for all the proceedings both in this Court of Courty, and of that by the Common law ought to be, as hath been fait. for the profit or benefit of the King, or touching the King: and if in either Court they held any plea, which is not for the profit or benefit of the King, o which toucheth not the King, there lyeth a Prohibition, which, as is aforelaid. appeareth in the Register: for all are said Communia placica which are not placita corona.

By the Catute of 33 H. S. cap. 39. they have full power and authority to dit. charge, cancell and make void, all and fingular Recognizances and bonds make to the King for payment of any bebt or fumme of money, or for performance of conditions, ac. upon theiring the Acquitance, ac. of any proof made of payment and performance. Also to cancell and make boid by their discretion all Reconnisances made for any appearance or other contempt. And that if any perion of whom any fuch debt or duty is demanded, alledge, plead, declare, or thew in the faid Court sufficient cause and matter in law, reason and good conscience in barre or discharge of the said debt or duty, and the same matter sufficiently mote in the faid Court : then the faid Court thall have power and authority to judge and allow the faid proof, and clearly acquit and discharge such person and persons. Also lands chargeable to the Kings debts in the seisin and possession of divers and funday persons, the same thall be wholly and * intirely, and in no wife febe rably liable to the payment of the faid debt and duty: but in the faid Act of 33 H.8, all manner of effates, rights, titles, and interests, as well of inheritance as free hold, other then joyntures toz term of life, are excepted.

By the faid Act of 33 H. 8. speciall jurisdiction is given to the Court of Aug. mentation, when title is pretended to any Mannors, Lands, Tenements, or Hereditaments, bargained, fold, or erchanged by the King, upon which Letters Patents there is 02 Mall be referbed any annuall Rents 02 Farms, paiable in the Court of Augmentations, and divers other clauses which gave to the Court of Augmentation jurisdiction. But the Court of Augmentation is but in thew ans nered to the Court of the Erchequer, and not de jure, as hereafter it appeareth in the Chapter of the Court of Augmentations. And therefore this Court of Exchequer Chamber cannot claime any jurification given and appropriated to that Court, for that the Court of Augmentations is discolved.

I.S. holdeth lands of the King by fealty and a yearly rent, and maketh a Leafe thereof for years to A. B pretends that I.S. leased the same to him by a former Leafe; albeit there is a rent issuing out of these lands to the Bing, pet neither A noz B can fue in this Court by any priviledge in respect of the rent, for that the King can have no prejudice or benefit thereby: for whether A or B doth prevaile, pet must the rent be paid: and if this were a good cause of paiviledge, all the lands in England holden of the King by rent, ac. might be brought into this

But if black acre be extended to the King for the debt of A as the land of A, and the King leafeth the same to B foz years, reserving a rent: C pretends that A

Art cler.cap.4. Regist.fol.187.b. stat.de Rorland. cap. ultimo.

Cancell.

Cancell.

Matter in law, reason and good conscience. Lib.7.fo. 18. Sir Thomas Cecils case, and resolved by English bill in the Exchequer Chamber. See there divers prefidents. Lib.7.fo.20.ubi Supra. Et. lib.3.fo.12. Sir Wil. Herberts cofe. Inheritance. Freehold.

32 E.3 tit. Aid Le Roy 1. 35 H.6 56.

had nothing in the land, but that he was feifed thereof, ac. this case is within the priviledge of this Court, for if C prevaile the king lofeth his rent.

The Bing maketh a Leafe to A of Black acre for years referbing a rent and A is pollelled of a tearm for years in White acre, the king may diffrain in White acre for his rent, pet A hath no priviledge for White acre, to bring it within the wisolation of this Court.

Rote Reader, where our Books fay, that the king may diffrain for his rent 44 E.3. 454 in all the other lands of his tenant, of whomfoever the fame be holden, it is thus to be under food, that the other lands must be in the aduall possession of the Kings fenant, for he cannot diffrain in those lands in the possession of his tenant for

life, tenant for years, or at will.

Some are of opinion that a Court of Equity was holden in the Erchequer Chamber before the statute of 33 H.8. And then it must be a Court of Equity by mescription: for we find no former Act of Parliament that both create and effahith any fuch Court: and if it be by prescription, then judiciall presidents in Real fecke. murle of equity must guide the same : As to the Jurisdiction, certain it is that there bath been of ancient time an Officer of the Erchequer called Cancellarins Cancellarins Scaccarii, of whom amongit other Difficers of the Erchequer Fleta faith thus : Scaccarit, Officium vero Cancellatii est figillum regis custodire fimul cum controrotulis de Mirror, cap, 2, proficuo regni. And the Mirro faith, Perjure est per la ou il fuit Chancelor del \$ 13. & cap. 5. Eschequer vea a tiel a faire luy acquittance de tant que avoit pay al Eschequer de 92. la dett le Roy south le seale del Eschequer ou delay a faire acquittance de tiel jour tang: atiel jour, &c. Dis ancient fee is 40 Marks. Libery out of the Wardlobe 12 li. 17 s. 4d. in toto 39 li. 10 s. 8d. Det 25 H.8.cap. 16.

* The Erchequer hath a Chancelour and Seal, and the Carits usuall in the Pl.com.31. chancery in the Erchequer to feafe land, are more ancient then Prerog. Regis. Dereupon it is collected, that feeing there bath been time out of minde of man a Chancelour of the Erchequer, that there should also be in the Erchequer a Court

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where some doe bouch 22 E.4. tir. Petition 9. for the naming of the Chance lour of the Erchequer in granting of Wirits of fearch to the Areafurer and Chancelour, the book is false printed, for it should be the Chamberlaines and Treasurer of the Erchequer: for no Wirit of fearch is directed to the Chancelour, sc. but to the Treasurer and Chamberlain of the Erchequer, who have the cultody of the Records, ec.

"We find a Detition of the Commons in 2 H. 4. that no Write of Dathie a Rot. Par. 2 H. 4. Deals be fried out of the Chancery, Erchequer, or other place, to any man to ap, nu.69. pear upon a pain, tc. to answer, tc. contrary to the ordinary course of the Commonlaw: whereunto the Bing answered, That such Writs should not be gran-

ted without necessity.

h Anno 3 H. 5. the Commons petitioned that all Wirts of Subporna and Certis Rot. Parl. Anno decausi going out of the Chancery and the Erchequer might be inrolled, and not 3 H. s.nu. 46. granted of matters determinable at the Common law on pain of 40 li. The

Bings answer mas, That he would be advised.

So as in the Erchequet there are thele leven Courts. 1, The Court of Pleas, 6 H.7. 15. 2. The Court of Accounts, 3. The Court of Receipt, 4. The Court of the Ersthequer Chamber being the "Allembly of all the Judges of England to, matters in lato, 5. The Court of Erchequer Chamber foz errozs in the Court of Erche- Roc. Clauf in quer. 31 E. 3. cap. 8. & 31 Eliz. cap. 1. 6. A Court in the Erchequer Chamber Dorf. An. 13 E. 1. to tross in the Bings Bench. 27 Eliz.ca. 8.31 Eliz.ca.1. Co.pl. Intr.fo.2.24.37, in schedula pend. And 7. This Court of Equity in the Eschequer Chamber.

13 E.4. 6. 8 H. ... Pl. com.323. 2. This prerogative holderh not only in case of Rent fervice, but in cale of a Rent charge, and

c 7 H.6.44. 8 H.7.13. Vet.N.B. Et fi contingat quod, &c. Vide

Supra, pag. 110, 31 E. 3:cap. 8. 31 Eliz. cap. 1.27 Eliz. cap. 8. 31 Eliz. cap. 1. Co.pl. Intr. fo'2,24, 37.

CAP. XIV.

Of First-fruits and Tenths Ecclefiasticall.

Stat.de 32 H.S. cap.456 Rot.Par 47 E.3. nu.30. 7 H.4.nu.43.acc.

26 H.8.cap.3. 2 & 3 Ph. & M. cap.4.

t Eliz.cap.4. observe the alterration and alternation.

25 H.8.cap.5. 1 Eliz.cap.4.

a Walf, An. Dom.
13 16. Trivet.
Ranulphus Ciftrenfis, li.7.c.42
Polyd. Virg. lib.8.
cap. z. Platina.
Fox, &c.
b 2 E 3. Rot.
clauf. m. 4.
c Parl. 1 R.2.
nu. 66.
d Rot. Par. 4 R.2.
nu. 44.

e Note they were not so ancient with us, as is pretended. fRot. Par. & R. 2. nu. 50. g & H. 4.cap. 1.

b Rot.Par.9 H-4nu. 43.

i 19 E.3. tit. Jurildiction. 22. k 26 H.8.cap.3. A Court of the First-fruits and Tenths was raised, Officers constituted, of Chancelour, Treasurer. Usings Attorny, two Auditors, and two Clerks: Authority given them to compound for First-fruits, Bonds taken there some thould be of like force as a Statute Staple: but this Court was dissolved by Queen Mary Parl. 1. Self 2. cap. 10.

These were granted to the Crown by the statute of 26 H.8, cap.3. But all the Clergy were gronerated and discharged thereof afterwards, Anno 2 & 3 Ph. &

Mar. cap. 4.

The Katute of 26 H.8. revived, and First-truits and Tenths of the Clergy reunited to the Crown by Anno 1 Eliz. cap. 4. But no Court is revived, but First-truits and Tenths to be within the rule, survey, and government of the Erchequer, and created a new Office, and Officer, viz. a Remembrancer of the First-truits and Tenths of the Clergy, who taketh all compositions so the said First-fruits and Tenths, and maketh process against such as pay not the same.

First fruits,02 Annates, Primitix, are the First fruits after avoidance of every Spirituall Living for one whole year (ercept Aicarages not erceeding 10 li,

and personages not erceeding 10 Marks but all are to pay Tenths.

Ecclesiaticall Livings were sometimes valued by a Book of Agration made in 20 E. r. which remaineth in the Erchequer, and by another taration in 26 H.8, which also remaineth in that Court. And according to this latter taration are the values of Ecclesiasticall Livings computed for the First-fruits and Tenths. What Pope first imposed First-fruits, until a Historians do agree, I will not trouble my self.

What we finde of Record concerning First fruits, we will summard

relate.

b The King forbiddeth H. P. the Popes Puntio to collect First-fruits, to

c That the Popes Tollector be willed no longer to gather the First-fruits of Benefices within this Realm being a very novelty, and that no person do any

longer pap them.

d The Commons do petition that probifion may be made against the Popes Collectors for levying of the First-fruits of Occiestaticall dignities within the Realm. The answer of the King in Parliament is, There shall be granted a Prohibition in all such cases where the Popes Collectors shall attempt any such e novelties.

f Apon complaint made by the Commons in Parliament, The King willeth that Prohibitions be granted to the Popes Collectors for receiving of

First-fruits.

g Against First-fruits by Arch-Bishops and Bishops to the Pope of Rome,

terming it a horrible mischief and damnable custome.

h It is enacted, that the Popes Collectors should not from thenceforth levy any money within the Realm for First-fruits of any Ecclesiasticall dignity by any provision from Rome upon pain of the statute of Provisors: but this is omitted out of the print of 9 H. 4. cap. 8.

i The Bithop of Pozwich had in 19 E.3. by prescription time out of minde of man First-fruits within his Dioces of all Churches after every avoidance. But these also were given to the Trowne k by the Statute of 26 Hen. 8.

Tenths Occiclianticall, Decuma, these are the Tenth part of the value of all Occiclianticall

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Ecclesiaticall Livings yearly pagable to the Bing, his Deirs and Successors by the fato Statute of 26 H. 8. and I Eliz, to be valued as is abovefaid.

Thefe the Pope (as the Canoniffs holdeth) pretended to have De jure Divino, as due to the Digh Priest by pretert of thefe words, Pracipe Levitis atq; denun- Num.18.26.&c. cia, cum acceperitis à filiis Ifrael decimas quas dedi vobis, primitias earum of Vi. Jerom.in Eze. ferte Domino, id est decimam partem decima, ut reputetur vobis in oblationem ca. 44. v. 28. &c. primitiarum tam de areis, quam de torcularibus & universis quorum accipietis primitias offerte Domino, & date ea Aaron Sacerdoti. But the Parliaments in 25 H. 8. and 26 H. 8. were not of opinion that thefe Tenthe Did belong to the 181: hop of Rome; as by the feverall preambles thereof appeareth, which we have aboed; for that we have endeavoured to thew through all this work the feverall claims of pretences of every thing whereof we have treated. And hing Philip and Queen Mary peilded not thefe Tenths to the Pope, but (as hath been fato) by authority of Parliament discharged the Clergy thereof: which they would never have done, if they had taken them to be due to the Pope De jure Divino. And the Bithop of Porwich could not have prescribed to have first-fruits with. in his Dioces, if they had been due to the Pope De jure Divino : and the rather, for that Anthony de Becke, for whom the prefcription was made, was a reteiner to the Court of Rome, and made Bilhop of Porwich by the Pope.

19 E.z.tit. Jurif. diction, ubi fup.

CAP. XV.

The Court of Augmentations of the Revenues of the Crowne of England.

Dis Court was erected by authority of Parliament in Anno 27 H.8. con: 27 H.8. cap. 27. lifting of a Chancelour, Areafurer, Attorny, Solicitoz. And all lands, sc. belonging to Monasteries, and purchased lands were within the survey and governance of this Court. This Court could not be erected but by Parliament, because a Chancelour and a Court of Equity were constituted. Pozc bereof in the next Chapter.

CAP. XVI.

The Court of Generall Surveyours of divers of the Kings lands with power to make Leases for twenty one yeares erected by Act of Parliament in 33 H. 8.

33 H.S.cap.39.

Brack. Nihil tam conveniens est naturali zquitati, unumquodque dissolvi eo ligamine quo ligatu est.
7 E.6. cap.2.
1 Mar.cap.10.

Dier 4 Eliz. 16. So refolved by all the Judges, Bis these Courts hing H. 8. by his Letters Patents Anno regnisin 38. Dissolved, and erected a new Court of Augmentations by his Letters Patents. The dissolution was holden boid, because they were created by authority of Parliament. Vid. the rehearsall of the Statute of 7 E. 6.cap.2, and the erection was also boid for the cause asociated. And thereupon the said Letters Patents, as well so, the dissolution of the soamer, and so, the creation of the new Court of Augmentations were confirmed and established by the said Act of 7 E. 6.

Ducene Mary according to the power given to her for dissolution of the said Court by Act of Parliament holden the sists of Davber in the sist years of her reigne, did afterwards by her Letters Patents, bearing date 23 Januarii in the same yeare dissolve the said Court of Augmentations; and the nert day following by other Letters Patents united the same to the Exchequer, which was utterly boid, because the had dissolved the same before: is as

the purfued not her authority.

P.

CAP. XVII.

The honourable Court of Chivalry before the Constable and Marshall.

Ot. Pat. 12 H.4. m. This Court is called Curia Militaris and Rot. Parl. The Stile of 2 H. 6. nu. 9. the Marthall Court.

The Judges of this Court are the Lord Contable of England and the Carl Marchall of England, and this Court is the fountain of the Marchall law. And the Carl Parthall is both one of the Judges, and to fee execution be bone.

Conftable of Cunftable is compounded of two Baron words, Cuninge per contractionem Kinge, and stable, idest, columen, quali columen regis, anciently witten Cuningstable. Marshall anciently watten Marscale, likewise of two haron woods, viz. Marc for equus; and Stale curator, quali curator equorum: For the Marifchallus, and the derivation thereof, fee the First part of the Inflitutes, Sect. 102. fol. 74. Sect. 154. fo. 106. Section 745. fo. 391.

This Court of Thivalry was anciently holden in the Kings Wall.

The jurisdiction is declared by the Catute of 13 R.2. fat. 1 . Because the Commons doe make a grievous complaint, that the The Iuris-Court of the * Constable and Marshall have incroached to them, dillion.
and daily doe encroach contracts, covenants, trespasses, debts and nurse notice price. detinues, and many other actions pleadable at the Common law, 13 R.2.flat. 1. in great prejudice of the King and of his Courts, and to the great ca.2. Rot. Park grievance and oppression of his people, The King willing to ordain *The Judges, a remedy against the prejudices and grievances aforesaid, hath* de- Vide infra. clared in this Parliament by the advice and affent of the Lords Spi- 1 H.4. cap. 14. rituall and Temporall the power and jurisdiction of the said Constable in the form that followeth.

To the Constable it appertaineth to have conusance of Contracts The power and deeds of arms, and of war out of the Realm, and also of things and jurisdiction that touch war within the Realm, which cannot be determined or discussed by the Common law, with other usages and customes to the same matters pertaining, which other Constables have heretofore duly and reasonably used in their time, joyning to the same that every Plaintif shall declare plainly his matter in his petition afore that any man be sent for to answer thereunto. And if any will complain that any plea be commenced before the Constable and Marshall, that might be tried by the law of the land, the same Complainant shall have a Privy Seal of the King without difficulty directed to the faid Constable and Marshall to surcease in that plea, till it be discusted by the Kings Councell, if that matter ought and of right pertaineth to that Court, or otherwise to be tried by the Commonlaw of the Realm of England, and also that they surcease in the mean time.

Dee the Third part of the Institutes, cap. High treason, pag. 26. Rot. Pat. 25 E. 3. parce 1, m. 16. 1 H.4. between the Lord Morly and the Carl of Sarum, the Record whereof we have feen, Rot. Pat. 2 H.4. parce 1.m.7, between Kighly and Scroop. Rot, Pat. 3 H.4. Balleshuls case. Rot. Vascon. 9 H 4. nu. 1 5. Bul-

the Court. The Judges. 43 E.3.fo.3.See the First part of the In flitutes, Sect.745.mar.y other authorities

The name. 1. part of the Inftitutes, sca. 102 & 153. The place,

nu.31.not in print

lemers take. Rot. Parl. 21 R. 2. nu. 19.&c. Rot. Parl. 2 H. 6. nu. 9. Holl. Chron. 424. 3 H.4. Sir John Annesleys take. See this take Walking. pa. 237. Duellum percusium. Ibidem & R.2. 446. John Walkhes take. For this take of Walkh, see Walking, pa. 31 1. and Stowes Annals 477. Howes Chron. & H. 6. 371. between John Upton and John Down. Vide Stowes Survey of London 385. See this take, Rot. Pat. & H.6. parte 2. m.7. Annals 609. Stow. Ibid. Anno 25 H. 6. Anno domini 1446. between John Davye and William Catur his master, Annals 655. ibid. 386. battell sopned between Thomas Fitz-thomas Prior of Litman and James Butler Carl of Drmond; but when it came to the point the Ling sorbad it. Vide Rot. Parl. 2 H.6. nu. 9. John Lord Talbot Lievetenant of Ireland accused the Carl of Drmond of Pigh treason before the Carl of Bedsord Constable of England in his Parthals Court. the Ling bid abolish the accusation.

That jungment chall be given when either party is vanquished, see the Ar. ticles of the Duke of Glouc' Constable of England about the beginning of the reign of R.2. The law of arms is, that the Appellant being overcome shall incurre the same punishment, that the Desendant ought to have done if he had

banquished.

See an ancient Manuscript in French entituled Modus faciend' Duellom coram Rege, Bone foy & droit & ley de Arms voer, que lappellant encourgemente peyne que le defendant deveroit, fil ioit convict & discomfit. * And this seemeth to be consonant to the late of God.

This Panuscript treateth both of the jurisdiction and manner of the processing before the Constable and Parshall, and for that it is long, and I doubt not

but copies thereof are in many hands, I have not inscribed it here.

There are many in forain parts that have written of Combats, to. in Latine, French, and Italian. As Alciar, Lancelottus, Conradus, Johannes de Lignano, Mutio Justino Politano, Berandier, Beutheus, Desdigueres, &c. to whom we refer the reader, for that it is safe to follow the Acts of Parliament concerning the jurisdiction of this Court, and such presidents as have been before the Consable and Parshall in the Parshals Court within this Realm.

Out of the Realm.] This is to be understood in any forain part beyond the Seas, In partibus exteris & transmarinis. For upon the Sea the Admirall hath jurisdiction, which Admirall (our English Peptune) cannot meddle with any thing done beyond the Seas upon the Land, and the Constable and Harshall have no constance of any thing done upon the Sea.

There by these Ads it is provided, That all creasons, misprision of creasons, or concealment of treasons committed out of this Realm of England, should be inquired of, heard and determined in the Kings Bench by good and lawful men of the same Shire where the said Bench shall sit, or else before such Commission ners and in fuch Shire, as should be assigned by the Kings Commission by good and lawfull men of the same shire, in like manner and form to all intents and purposes as if such treasons, &c. had been done within the same, &c. shore of these Ads doth take away the jurisdiction of the Constable and Parchall, where one accuseth another of High treason done out of the Realm: for of such an acculation of one against another of any High treason done out of the Realm the Constable and Parchall Could have conusance thereof: because High treason is not triable by Jury according to the course of the Common laws of the Realm in that case so, want of proof, as by all the presidents a foresaid it appeareth. Petther doth the said Act of 35 H. 8. 02 5 E. 6. take a way the statute of 28 H. 8. cap. 15. for tryall of treasons done upon the Sea, albeit they be done out of the Realm. See hereafter Cap. 23. and the Third part of the Inflitutes, Cap. of Diracy, pa. 111, & 112. and there was no doubt concele bed of the triall of them. See the preamble of the statute of 35 H. 8, and of

* If any Herchant English be spoiled, or his goods taken from him beyond Sea by any Perchants Arangers, and the English Perchant cannot upon suit

" Deut 19.18. And the Judges shall make diligent inquisition, and if the accufer be found falle, and that he hath given falle witnefle against his brother, then shall you doe to him, as he had thought to doe to his brother, and thou thalt Put evill away from the middeft of thee.

26 H.8.ca.13. 35 H.8.cap.2. 5 E.6.cap.11.

See 1 E.6.c3.12. & 5 E.6.ca.11. in the 3. part of the Inft.pa.24.

See 5 El.ca.5.

Vid. Regi. 129. F.N.B. 114.b. Note remedy by the Common law for wrong done beyond the Sea.

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attain to justice there, he chall have upon testimony thereof a wait out of the Chancery to arreft the Aperchants ftrangers if they come into England, 02 their goods, tc. untill they be fatisfied. See hereafter the Chapter of Admiraltp.

Before this Act at a Parliament holden in the 8 year of R. 2. It was e- Rot. Par. 8 R. 2. naded, that no plea which thould concern the Common law thould be tried bc. nu. 31. not prin-

fore the Constable and the Parshall.

po addition either of persons 03 of jurisdiction can be added to this Court, Rot. Par. 5 R.2. whele it be by Act of Parliament, * for ancient Courts ought to be exercised ou 39. Become

according to the ancient and right institution.

In the Appeal aforesaid between Upton and Down in 8 H.6, after battell joyned, the Kings writ out of the Court of Chancery issued to the Sherifs of London, as we find it entred and recorded in the great book of the Abbby of Bury fo. 87. as followeth.

Wilmots cafe. 6 H.7.5. Simile. * Regul. 6 H 7.

Rex Vic' London Salutem: Precipimus vobis firmit' injungentes quod Breve Vic' Lonquasdam listas & barras de meremio fortes & satis sufficientes pro quodam Duello inter Iohannem Vpton Appellantem & Iohannem Down Defendenten, secundum legem Armorum die Lune prox' futur' apud Westsmithfeld in suburb' Civitatis pradicta Deo dante perficiend' contra diem pradictum nostris sumptibus & expensis erigi, construi, & fieri fac' in omni- fer down by bus prout in ultimo duello ibidem facto fact' fuerunt, & quod terra infra liha pradict' cum sabulo sufficiente & equalit' cooperatur, Ita quod ali- Glouc' Confiaqui lapides grandes aut arena infra easdem listas minime inveniantur ble of England, quovismodo: Et de omnibus & singulis pecuniarum summis quas circa premifa applicaveritis, nos vobis in compoto vestro ad Scaccarium nostrum per of R.a. presens mandatum nostrum, debitam allocationem habere faciemus. &c.

By this wit we observe 4. things. 1. That Sherifs ought to make the see mod' fac' lifts,tc. 2. The manner how they are to make them. 3. That they ought duellum coram to make them by the Bings witt. 4. That they are to be made at the Bings rege. charges.

By the flatute of 1 H.4. all Appeals of things done within the Realm hall 1 H.4. cap. 14. be tried and determined by the good laws of the Realm, sc. And that all Ap. peals made of things done out of the Realm thall be tried and determined be: for the Constable and Marshall of England for the time being, and that no Apr Rot. Par. 11 H.4. peal be pursued in Parliament.

They proceed according a to the cultomes and ulages of that Court, and in tales omitted, accoading ' to the Civil law , fecundum legem Armorum. And law, &c. therefore upon attainders before the Constable and Marshall of England for the time being no land is forfeited, or corruption of bloud wrought.

For Records, Book-cases, and other authorities in law as well for the er. fo.38. polition of the laid flatutes, as for the jurisdiction and proceedings of this court, fee the First part of the Institutes, Sect. 102, and 745, and peruse the Authorities b'11 H.4.nu.24

there cited. See also the petition of Right, 3 Car. cap. 1.

It is to be observed that after sentence pronounced in this Court of Chivalry in case of Arms the party grieved may appeal to the king, whereof you may read a notable Record, Rot. Par. 13 R.z. parce 3. Pote also a special Rol, An. 14 R.2. intituled Ror. process' in curia militari in causa Armorum, Int' Ricu le Scroop Chivalier, & Robertum Grovener Chivalier.

And for this cause (amongst others) . the Heralds are Attendants upon this Court. Of these Beralds there be tres Reges, viz. Garter Rex Armorum, Cla- An Ad not in

don pro liftis & barnis,&c. pro duello fac'. Lex Armorum. See the articles flock Duke of about the beginning of the reign

a 13 H.4.fo.4.5. & By the Civil 37 H.6.fo. 2. Forresc'cap.32.

All flatutes made touching the Courts of the Constable and Marshall and Admiral of England shal be observed. Vide Rot. Parl. 5 H.4 nu. 14. print touching

a Commission for arraying and mustering of men, which at this day is of force, and no other. Vide 8 H.4. nu. 12 Clergy exempt out of that. See alfo 14 E. 3. flat. 2. nu. 53. a Commission of Lieutenancy. See hereafter among ft. the Ecclefiasticall Courts, Tit. Appeals. Vid. Glover 82,83. c Saxomice Epinhold i. honorem tenens, Latine faciales. 5 E.4.6.b. Pl.Com. 12.b.

bee the boil mit of he

a Rot. Pat. 1 R. 3. Rot.Pat. 2 & 3 Ph.& Mir. 18. July: Their Colledge is in the Parish of S. Bennet in Castle Bainard Ward granted to the corporation of the Heralds by Letters Patents bearing date 18 July 1555. Anno 2 & 3 Ph. & Mar. 6 Ezech. 13.8,9. Pfalm.69.deleantur de libro viven. tium, & cum juftis non feribantur. 1 Efdr.ca. 2. 62. Hi quefierüt scripturam gencalogia sua & non invenerunt, & ejecti funt. c Discharged of Subfidies. d Regist. 287.b. F.N.B. 247.C. * Or in the Kings Bench or other Court. Nota, proBarone. Vid.8 H.6 9,10. 14 H.6.2. Lib.6. fo.53.b.le Countes de Rutlands

renceux Rex Armorum ex parte Australi. Norroy Rex Armorum ex parte Boreali, & sex alii Heraldi. These English Peralds are messengers of war am peace, skilfull indescents, pedegrees, and Armories; they marshall the solemnties at Coronations, they manage combats before the Constable and Parshall and upon request they solemnize the Funerals of noble, honourable, reverend, and worthfull Parsonages. They were first incorporated by King R. 3, and afterwards newly incorporated by King Philip and Dueen Wary. Their learning and faithfull dealing in descents and pedegrees upon just proof may be a mean to quiet many controverses about the titles of honors, dignities, and inheritances.

b In the Prophet Ezechiel it is thus written: Dicit dominus deus, & ent manus mea super Prophetas, qui vident vana, et divinant mendaeium: in concilio populi mei non erunt, & in scriptura domus Israel non scribentur.

Apon these latter woods Divines de held, Quod mos erat in Israel, quodenaque que familia genealogiam ejus scriberer, in qua dinoscebatur quilibete qua tribu erat, & de qua familia, & que hereditas ejus esse deberer, & ille qui penitus destrueretur non scriberetur.

These Heralds are discharged of Sublidies. Tols and other charges of the Common-wealth, by Letters Batents of E.6. Anno 3. of his reign.

See the First part of the Institutes so, degrees, and creations of Pobility, and triall thereof, Sect. 9. fo. 16. & Sect. 95. fo. 69. whereunto you may adde a natable writt in the Register, when a Baron or any higher degree of Pobility is sued in the Court of Common pleas, and processe awarded against him by Capias or Exigent, then may be sue out this writ.

Rex Iusticiariis suis de Banco Salutem. Mandamus vobis, quod si G. T. miles coram vobis ad sectam alicujus per actionem personalem implacitatus existit, talem processum & non alium versus ipsum in actione pradicta sieri faciatis, qual' versus dominos, magnates, Comites sive Barones regni nostri Anglia qui ad Parliamentum nostrum de sommonitione nostra venire debent aut eorum aliquem secundum legem & consuetudinem regni nostri Anglia suerit faciend', quia pradict' G. T. unum Baronum regni nostri pradict' ad Parliamenta nostra de sommonitione regia veniensium recordari. & c.

The Barony of Edmond de Eincourt commonly Deincourt of Langley in Lincolnshire oxiginally created by wxit, had long continued in his Sitname, and having no issue male, desirous that his Sitname, Arms, and Barony, all which he held in fee simple might continue, by humble suit importance king E. 2, so that he conceived, Quod cognomen sum & arma post mortem sum delerentur, & corditer affectabat ut post mortem eins in memoria haberentur, ut de maneriis & armis suis feosfaret quemcunque volucii: and in the endht obtained his suit by the kings Letters Patents under the Great Seal, and asterwards about 19 E. 2, he assigned according to the Kings grant his Sitname, arms, and possessions. For we find in the close Rols that the said Edmond Baron of Eincourt sat in Parliament untill and in 18 E. 2, and that after his decease his assignee sat in Parliament in 1 E. 3, by the name of VVilliam de Eincourt, and in his heirs males the dignity, struame, and possession continued "untill 21 H.6. and then his heir male together with the name and dignity ceased.

And I did hear the Baron of Burghley Lord Areasurer Deputy to the Earl of Shrewsbury then Earl Parshall of England, in hearing of the cause by the Ancens commandment between Edward Nevil and Lady Mary Vanc daughter and heir of Henry Lord of Aburgaveny for the right of the Barony of Aburgaveny, bouch a record in the reign of E.4. That the Lord Hoe, who bare for his ensigns of honor quarterly Silver and Sable, having no titue male, by his

10 E. 2. Camden Brit. Kot. Cart. 23 H. 3. nu. 32. 34. Almarick Earl of Leic' Math. Par. pag. 647.

^{*} Inquisit' 21 H.6. Post mortem Willielmi domini de Eincourt.

Hil.anno 31 El.

need under his feal granted his name, arms and dignity over, but having not the Bings licence and warrant, the same was in Parliament adjudged to te boid.

Dur Heralds are constituted by Letters Patents , and have many ceremo: nies done unto them at their creation, but those ceremonics are not of the effence their office, but the Letters Patents only: and fo was it adjudged in the aings Bench in the reign of Queen Eliz. in the case of Dethick king of arms. But thus much of Geralds upon this occasion thall fuffice; and now tet us return to our Constat le and Marshall.

In ancient laws before the Conquett, you thall read De Heretochiis or Here- Int' Leges Ed-

togiis, i, ductoribus exercitus, ab hepe exercitus & toecu, ducere.

Heretochius agreeth with either of these great Dfficers, Conflabularius 02 venden Annal. Marichallus: Isti vero eligebantur per commune concilium pro comuni utilitate Cap. 35. De He-

regni per provincias & patricos in pleno Folkmote.

This office of the Conftable of England was afterwards of inheritance Ofancient time bothe tenure of the mannogs of Harlefield, Powman, and Ahitenburat by eligible. mand Serjeanty, in the line of the Bohuns Carls of Hereford, and Caer, and afterwards of right in the line of the Staffords and Dukes of Buckingham . See 11 El Dier beirs generall to them : at the last by the opinion of 'all the Judges it was 285. forefolved bivilly descended to Edward Duke of Buckingham, who was attainted of in 6 H.8. treason, in Anno 13 H.S. whereby this office became societied to the Crown, mo fince that time both in respect of the amplitude of the Authority both in har and peace, and of the charge, it was never granted to any subject, but now of late hac vice.

for the office of the Carl Marchall, fee the First part of the Inflicutes, Sect.

102. & 135.

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The effect of the grant of this Office of Constable of England is in very fel woods, viz. Officium Constabularii Anglia una cum omnibus seodis, proficis, commoditatibus, & emolumentis quibulcunque officio prædicto qualitercunque percinentibus, & ab antiquo debitis & consuetis. And by no means 1-se me to follow the irregular prefident of the grant thereof by Ling E. 4. in the 7 year of his reign to Richard VVidevile Carl Rivers and Load of Grafton and De la mote for his life: which Patent you hall find Rot Pat. Anno 7 E.4. per 1, and is directly against the Common law and the statutes concerning the jurisdiction of this Office; and therein to over-reach all the good and wholesome laws made for the declaration of the jurisdiction of this great Office, wwer was given to the Carl Rivers to have conusance in case of High treas fon, and other causes and affairs, Que in Curia Constabularii Anglia ab antimo,viz. domini Guilielmi Conquettoris progenitoris regie, seu aliquo tempore citra, tractari, audiri, examinari & decidi consueverunt, eu de jure debuerunt sivedebent, & diversa alia perperam. And therefore by no means the same or the like is to be drafton into example.

For grants of this great Office of Conftable of England, fee the prefidents, and by that which hath been faid choose the best. Rot. Par. 1 H.4. parre 1. Henrico comiti North pro vita. Rot. Par. 4 H.4.parte 2. Johanni filio regis,ad placium. Rot. Parl. 1 H. 6. nu. 23. Duci Glouc' ad placitum. Rot. Pat. 1 H. 6. parte 2. Johanni Duci Bedford pro vita. Rot. Pat. 8 H.6. parte 1. Richardo Duci Eborum in absentia Johannis Ducis Bedford. Rot. Pat. 25 H. 6. parte 1. Johanni Vicecom' de bello monte. Rot. Pat. 28. H.6. parte 2. m. 22. Henrico Com. Northumbr. ad placitum. Rot. Pat. 29 H. 6. parte 1. Edmundo Duci somerset ad placitum. Rot. Pat. 1 E. 4. parte 3. m. 188. Johanni Com' VVigorn'. Rot. Pat. 7 E.4. parte 1. Johanni domino Tiptost. Rot. Pat. 7 E.4. Ubi supra Richardo Com' Rivers. Pat. 8 E. 4 parte 1. Pat. 9 E. 4. Georgio Duci Clarenc'. Pat. 9 E.4.parte 2. Richardo Duci Gloc'. Par. 10 E.4.parte Johanni Tiptoft Comiti His omnium im-VVigorn, pro vita. Pat. 16 E.4. parte 1, kicardo Duci Eborum. Henricus Stafford dux Buckingham jure hareditario. Pat. 1 R.3. Thomas dominus Stanley. elty are never un-

Edwardus dux Buck' jure hareditario.

wards regis. Lamb. 136. Horetochii. Lambard ubi fup. Hovend.ubi fup.

the debts of crupaid, respice fine.

This

This great office bath been usually granted, as by the presidents asoresain appeareth. Exercendum per se vel per sufficientes deputatos suos, seu per sufficient deputatom suum.

There is also an Office of Subconstabularius granted to Thomas Ken

Doctor of latos. Pat. 23 H.6. parte 2. Simile Pat. 22 E. 4. m.2.

There is also Clericus Constabulariæ Angliæ, & Promotor causarum & negotiorum regiam majestatem tangen'. This Dffice was granted to Thomas Appulton with a see of five marks. Pat. 8 E.4. parte 1.

Concerning the grants of the Office of Carl Harshall of England: to this Office ever passed by the grants of the King, and never belonged to any Subject by reason of tenure, as the Stewardship, and Constableship of

England fometime bid.

Ro.Cart.20 R.2. m. 1.n.3.

* This is the first stile that ever came in any Patent.

Rot.Cart.9 R.2.

Rex, &c., Sciatis quòd cum nos nuper de gratia nostra speciali concesserimus dilecto consanguineo nostro Thomæ Comiti Notingham Officium Mareschalli Angliæ: habendum ad totam vitam suam. Nos jam de ulteriori gratia nostra concessimus præsato consanguineo nostro officium prædictum " maresculis de corpore sua exeuntibus cum omnibus seodis, prosicuis & pertinentis quibuscunque dicto officio qualitereunque spectantibus imperpetuum. Hiistestibus, &c., Dat' 12 Junii Anno regni sui 20. This Charter of creation is construed by Act of Parliament. The soumer grant besoze recited, yet shorter than this, was made anno 9 R. 2.

For other grants of this Office in Rot. Cartarum, Pat. & Parl, See Rot, Can.

I Johannis parce 2, nu. 85, Rot. Cart. 9 E. 2, nu. 32,

Vide Rot. Pat. 2 H. 8, parte 1. m. 12, 1 H. 4. parte 1. &. 5, m. 6. 1 R. 3, parte 1. m. 12, 1 H. 7, parte 3. 2 H. 8 parte 2. 25 H. 8, parte 2. 1 E. 6. parte 2, 1 J. parte 13. nu. 5. (3 H. 6. m. 181,

Vide Rot. Parl. 1 R.2. m.4. & 3.

Parl, 21 E. 1. Rot, 1. Quæ pertinent ad officium Comitis mareschalli, &c.

Pat. 22 E.4.m. 2.

There was also Vicemareschallus, which office was granted to Tho: Grey hac vice.

Vide Lib. nigr' de Scaceario, concerning the offices of the Constable and Parthall, & Lib. rubro fo. 36.

See also the Marthall of England, Flera lib. 2, cap. 4,5, and Britton in principio libri.

See Mich. 13 E. 2. in Scaccario pro feodis Constabularii Anglia.

Hil, 5 E. 3. in Scaccario Certificatio fact' Regi pro officio Mareschalli. I E. 3. fo. 16. 2 E. 3. fo. 12. 48 E. 3. 3. Rot. Parl, 2 R. 2. nu. 47. 5 R. 2. Tit. Triall 54. Rot. Par. 5 H. 4. nu. 39. Keylwey 172. Stanf. Pl. Cor. 65. Fortesche Ca. 32. so. 38. 5 Mar. Br. tit. battell 15.

Hereslita fignifieth a Soldier bired and beparting without licence, beribed

of Here, exercitus, & fliten, to Depart.

Regist. fo.191.2. & Par.5 E.3. nu.18. If any Soldier have covenanted to ferve the King in his war, and appear not at the time and place appointed, there leeth by the Common law an opiginall writ of Capias conductos ad proficiscendum, directed to two of the Kings Sergeants

Cap. 17. berjeants at Arms to arrest and take him wherefoever he may be found, and to bring him Coram concilio noftro with a clause of all iffance : but of this matter fee the Third part of the Institutes, Cap. [Soldiers that depart, et.] See 3 Car. the petition of Right concerning martiall law, and the Commission to Lieutenants, ec.

To conclude with some thost touch concerning right of war. Si quando ac- Deut, 20.10.&c. cesteris ad expugnandam civitatem, offeres ei primum pacem: and see there many things concerning right of war. Quis rex iturus committere bellum Luc.14.31. adversus alium regem, non sedens prius cogitat si possit cum decem millibus occurrere ei qui cum viginti millibus venit ad fe, alioquin illo adhuc longe agente legationem mittens rogat ea quæ pacis funt.

Haud facile vincitur qui de suis & adversarii copiis vere poterit judicare. Qui colloquium offert, semper pavescit, he that offereth parly is ever afraid. Vegetins de re Nulla sunt meliora confilia quam que ignoraverit adversarius antequam facias. militari.

Nullum bellum est justum, nisi aut pro rebus petitis geratur, aut ante de- Cicero, Offic. nunciatum fit, & indictum.

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Jure gentium non licet indictas inimicitias exercere & bellum-gerere, prius- Camden, gram ille à quo injuria sit orsa moneatur illicitam injuriam resarcire, & ab injuria ablistere.

Influm autem bellum eft quod tria hæ habet, Authorem, Causam, Finem. Semper in prælio hiis maximum periculum, qui maxime timent.

Longa belli præparatio celerem dat victoriam,

Ideo suscipienda sunt bella, ut sine injuria in pace vivatur.

In republica maxime conservanda sunt jura belli.

* Olim veteri lege armorum cives & burgenses militiam tractare profifbiti fu-

Whe bouch Vegetius for his own honor and worthineste, and for that Fortefene fo. 70. b. citeth him.

Tacitus,

Lipfins. Saluft. Veget, & Seneca, Cicero ubi (up. Arift.10. . Vid. 34 B.3. Tit.

CAP. XVIII.

The Court of the Marshalfea.

The name. s.part of the In flitu cs, 6.102. &

The Antiquity and honor. 4 H.6.8.L 5 E.4. 229.

Wherefore it is called the Court of the Marshalfea.

The Iurisdiction of this Court is original & ordinary. 4 H.6.1.

Hil. 20 R. 2. Cora Rege Rot. 58. Mild.

W.1.ca.26.fecs.

Rot. Par. 17 E.3.

Eu.31.

D; the derivation of Mareschallus & Mareschalcia, see before in the next preceding Chapter of the Court of the Constable and Parthall, that they be derived from two Saron words which we conceive tendeth much for the proof of the antiquity and honor of our Pation, feeting other Pations babe the same Officers and Offices; and in respect their name is derived from the language of our Anceffors, it is like they took the same from us.

Albeit in this Court the Steward and Parchall of the houshold are Judges, and the Steward hath the precedency, pet the Court is called the Court of Mar. Mallea for three causes. First, he is not only a Judge, but feeth that execution (which is the life of the law) be done. Secondly, his office is in force both in time of peace, and in time of war. Thirdly, though the Constable bath the mes cedency of the Parihall of England, yet the Court holden befoze them is called the Marthall Court, for the causes aforesaid. See before in the Chapter of the Conftable and Marthall, fee alfo Rot. Par. anno 8 H.4, nu. 82, that the Court of the Marchall can hold no plea but fuch as were holden in the reign of E.i.

For the jurisdiction of this Court, and within what precinc, fee in my Reposts, Lib. 10. fo 68,69,&c. Le case del Marshalsea. Lib. 6, fo, 20,21, Michelbornes cale. 7 H.4. 15. in Calvins cale. Lib.4. fo. 46,47. Swifts cale. See Parl. 30 E.I. Rot. 2. All inquisitions concerning any Citizen of London thall be taken in London.

Pertinet ad Marescallum Cur' hic venire fae' juratores super felones captos cum manuopere in Aula regis,

This Court hath his foundation from the Common law of England.

This Parshall by the flatute of VV. 1. can take no fee for boing of his office, but only of the Bing, but fuch fees as latter Ads of Parliament have given him, he may take. See the Third part of the Inflitutes, Cap. Crtostion.

For the fees of the Warthall of the Kings house, and of Classe bearers, and fer-

vitors of bils, fee the ftatute of 2 H.4. Cap. 23.

To conclude this Chapter with an Act of Parliament not in print. It is es naded that every person arrested into the Marshallea, may tell his own tale, and that the Officers doe not palle the Werge. See Par. 50 E. 3.nu. 91.162.

CAP. XIX.

The Counting-house of the Kings Household.

Domus Compotus Hospitii Regis.

T is commonly called the Greencloth, in respect of the Greencloth upon the 33 H 8.cap.12. Table, whereat the honourable Difficers hereafter mentioned do fit, viz. the Lord Steward, the Areasurer of the Kings house, the Controller of the kings house the Patter of the Household, the Cofferer, and two Clerks Controllers continually litting in this Counting-house for these purposes. First, for baily taking the accounts for all expences of the fait household. Secondly, for making of provilions for the faid boulehold, according to the Laws and Statutes of the Realme. Thirdly, for making of payment for the same accordingly. fourthly, for the good government of the Kings ferbants of household. Fifthly, the Cofferer is to pay the wages to the Kings fervants beneath the flaires, and the Lord Chamberlaine above the frairs of the Kings household. Vide 39 Eliz. cap. 7. and he is to account in the Erchequer for about 40000 li.

see Flera de officio l'hesaurarii Hospitii regis, &c. Habet enim Rex alios elericos in hospitio sno-ut Thesaurar Garderobæ suæ quæ est locus Clericis tantum affignatus, qua in Francia Camera Clericorum appellatur. Huic enim Thefaurario cur expens' Regis & familia sua committit, q cum Clerico provido sibi associato pro

Controllatore recordum habet ut in hiis q officium suum contingunt.

Officium Thef, Garderobæ est pecuniam, jocalia exemna regi facta recipere & recepta regisque secreta custodire, & de receptis expens' facere rationabiles, espensarumque particulas inbreviare, & de particulis comp' reddere ad Scaccarium fingulis annis in felto Sancta Margareta abique facio prastando, eo quod de De confilio regis confilio regis est juratus, Et unde primo debet distincte & aperte comp' reddere juratus. de omnibus recept' separatim per se in uno rotulo. In alio autem rotulo de ex. Modus compoti. pensis cotidianis de quibus Sen' audiverit comp', fimul eum Thes. & consocio suo. Item de necessariis expens. in quibus emptiones equorum, cariagia & plura alia continent'. Item de donis. Item de oblationibus & eleemolynis. Item de vadismilitum, Item de vadiis balistar'. Item de feod' forinsecis, Item de præstir' & accommodai'.

Item de expens. Garderobæ in quib° emptiones pañorum, pelure, cere, speru tele, & hujusmodi conprehenduntur. Item de jocalibus Item de expens, forinfecis, in quibus diversi onerant'in compot' reddend. Item de Nunciis, Item de Falconar'.

Thef, autem memoratus convenire debet fingulis no tibus Señ hospitii, Ca- Convenire finmerar' Controclatorem & clericum ejus, Coffrarium, Mar'aula & hostiar' milites, gulis noctil us, Mar'serviente & duos hostiar' aula & hostiar' camera servientes, assessore ferculorum,pincernam,panetr' pistorem & clericum eorundem officiorum, q de expens. dieta, viz., panis, vini, & cervis. pichiorum, ciphorum, salis, frudus, casei & hu-

jusmodi respondebir.

I Item duos magistros Cocorum, lardenar', poletar', scutellar', salsar', & eleri- Magistri Cocoru cum coquinæ qui de eisdem officiis pro omnibus in corum præsentia de expens. illius dietæ reddit rationem, quorum omnium præsentia necessaria est. Item Eleemofinar', janitor' servientem ad custodiam summar' & carectarum deputatum & clericum de Marescalcia cum Marescall' fractore equorum, qui quidem clericus de expens. feni & aven' litere fracture equoru & harnesie pro equis & earectis ac de vadiis servient' scutiferarum elericorum & gare' respondebit, cuj' interest scire tam de hiis qui de novo erunt admissi ad vad' Regis, quam de vagantibus & in hiis vadia minuere & augere. Vadia autem absentibus sine speciali pracepto regis nisi obsequio reg' suerint minime concedunt', præsentia autem Coronatoris

Fleta lib.z.ca.13. Thefaurarius. Garderoba.

Compotumred-

Regis necessaria erit in pleno compoto, compoti auditores super soro frumenti & aven instruct & edocet qualit' proclamat' in eisdem partibus per quod melius scire possint quot panes obolati sieri debent de quart' frument quibus omnibus congregatis audire debent expens, & rationabilem compot' illius dietæ.

Mareschalli autem de supervenientibus debent inseriori Mar'testimonium perhibere. Hostiarius miles hostiariis aliis de numero serculorum lardenar, coco, camerar', hostiario camer Regis, & sic quibus alii, & sic audiat' compotus de tota

dieta.

And then followeth a description of the duties of the severall officers above salb,

worthy the reading.

The Cofferer is in Flera called Coffrarius of the Coffer: because he should have money in his Toser to pay images, ic. as is asociated. It is enacted by the statute of 28 E.1.cap.2. That all Purveyours shall account in the household, of the Mardzobe. Rot. Par. 28 E. 3. nu. 34. no Purveyour arrested shall be brought before the Councell, ic. but take his remedy by the Common law. See the Third part of the Institutes, cap. Purveyours.

See the statutes concerning Purveyours, Anno 36 E. 3 cap. 2, 3,4,5,6, &c. But observe that there is left out of the print the pain on the Steward, Areasurer, Controller, and other Officers of the household at the Lings will, so, not executing the statute: which omission hath made those of the Ozeencloth the

bolder.

At that Parliament it was also enaced, that the Kings cariages hould be made in as easie manner as might be, and that in the Summer, and other times convenient, as in August (which is also left out of the print.) For the Kings Cariages see Mag. Cart. cap. 21. and the exposition upon the same in the Second part of the Institutes.

For the Wardrobe, Vide 15 E.2. Rot. per se. 1 E.4. ca.1. Clerk of the Wardrobe, Rot. Parl. 7 H. 7. the expences of the Kings household and Wardrobe, 1 H. 8. an Ac concerning the great Wardrobe, 3 H. 8. the assignment so the Kings Wardrobe. 39 Eliz. eap. 7. Haster of the Wardrobe, whose office is accountable in the Exchequer. See W. 1. cap. 44. what issues the Kings Instices are to estreat into the Wardrobe: more of the Wardrobe, Rot. Claus. 33 E.1. m. 3, Rot. liberationum, 11 E.2. m. 4. To conclude, See Rot. Claus. 18 E.4. m. 13, where it appeareth that Letters and Waitings concerning matters of state, which were not sit to be made bulgar, were involled in the Wardrobe, and not in the Thancery, as leagues were and ought to be, as it appeareth in 19 E. 4.6. And thus much of the Wardrobe being mentioned in Flera.

The Officers of the Counting-house never held plea of any thing.

Artic. sup. Cart. cap. 2.

Countinghouse baving the Greencloth.
Rot. Parl. 28 E.3.
nu.34.

36 E.3.ca.2,3,4
&c.

Rot. Parl. 36 E.3.

Vid. infra, cap. 16

ta

CAP. XX.

The Court of the Lord Steward, Treasurer, and Controller of the Kings household, concerning felony by compassing or conspiracy to kill the King, or any Lord or other of the Kings Councell, &c.

Dep have jurisdiction by Act of Parliament, to enquire, heare, and befermine the said offence, as particularly sat large appeareth in the Third part long by compassions of the said of th of the Inftitutes, cap. Felony, by compatting, or confpiracy to kill the Bing, ac.

3 H.7.cap.14. 3 part of the In-flitutes cap. Fefing or conspiracy to kill the King, fol.67:

CAP. XXI.

The Court of the Lord Steward of the Kings house, or in his absence of the Treasurer, and Controller of the Kings house, and Steward of the Marshalsea.

Bey have jurisdiction by Ad of Parliament to enquire of, hear, and determine all Tree Difpition of treasons, Purders, Panslaughters, valitious arikings, whereby blood thall be thed in manner of pro-Bloodhed, and any of the Palaces ar the king, or in any other house where the king in his 1R opall Perfor thiding. And by that Act the 'limits and bounds of ; the boule where the Royall Person is abiding , of the Inflitutes, the kings Palaces are particularly and expense up let forth and described. In this and like cases we res cap Misprision. fer you to the statute it felfe, for Compendia funt dispendia,

33 H.8.cap. 12. See the statute for the triall and ceeding. Raftall pl. 124. See the third part fol.229. * Vide 23 ca 12.

CAP. XXII.

The Court of the Admiralty proceeding according to the Civill Law.

Articuli Admiralitatis.

Articuli Admiralitatis, The Articles of the Admiralty The Proces and proceedings in this Court are in the name of the Lord Admirall.

The complaint of the Lord Admirall of England to the Kings most Excellent Majesty against the Judges of the Realme, concerning Prohibitions granted to the Court of the Admiralty 1 1 die Febr. p. nultimo die termini Hilarii, Anno 8 Iac. Regis: The effect of which complaint was after by his Majesties commandement set downe in Articles by Doctor Dun Judge of the Admiralty; which are as followeth, with answers to the same by the Judges of the Realme; which they afterwards confirmed by three kindes of authorities in law. 1. By Acts of Parliament. 2. By Judgements and judicial proceedings: and lastly, by Book cases.

Complaint,

The Title of the Certaine grievances whereof the Lord Admirall and his Officers of the Admiral ralty do especially complain, and defire redreffe.

1 Objection.

hat whereas the conulance of all contracts and other things done upon the Sea belongeth to the Admirall jurifoiction, the same are made triable at the Common Law, by supposing the same to have been done in Cheapside, and his

The Answer.

1By the lawes of this Realm the Court of the Admirall hath no comfance power, or jurisoidion of any manner of contrad, plea, or querele within any County of the Realm, either upon the land of the water : but every fuch contract, plea, or querele, and all other things rifing within any County of the Realm, either upon the land or the water, and also Wereck of the fea ought tobs tried, determined, discussed, and remedied by the lawes of the land, and not before, or by the Admirall nor his Lieutenant in any manner. So as it is not material whether the place be upon the water infra fluxum & refluxum aqua : but whether it be upon any water within any County. Therefore we acknowledge that of contracts, pleas, and querels made upon the fea, or any part thereof which is not within any County (from whence no triall can be had by twelve men) the Admirall hath, and ought to have jurifoidion. And no president can be the wed that any Prohibition hath been granted for any contract, plea, or querele concerning any marine cause made or done upon the sea, taking that only to be the sea suberein the Admirall hath jurifdiction, which is before by law described to be out of any County. See more of this matter in the Answer to the firth Article.

The description and limitation of the (Sea) wherein the Lord Admirallhath jurisdiction.

> When Actions are brought in the Admiralty upon bargains and contracts made beyond the feas, wherein the Common law cannot administer justice, get in thefe cafes Prohibitions are awarded against the Admirall Court.

2 Objection.

Bargains of contracts made beyond the feas wherein the Common law cannot administer suffice (which is the effect of this Article) do belong to the Constable and Parshall, for the jurification of the Admirall is wholly confined to the fea, which is out of any County. But if any Indenture, Bond, or other Specialty, or any contract be made beyond fea for boing of any act or payment of any money within this Realm, or otherwife, wherein the Common law can ab: minifter

The Answer. See hereafter in the proofs by Judgements and judiciall prefidents.

minister justice, and gibe ordinary remedy; In these cases neither the Constable and Marthall, not the Court of the Admiralty bath any jurifolition. And therefore when this Court of the Admiralty bath dealt therewith in derogation of the Common law, we finde that Prohibitions have been granted, as by law they

Thereas time out of minde the Admirall Court hath used to take Afpulations 3 Objection, for appearance and performance of the Acts and Judgements of the fame Court: It is now affirmed by the Judges of the Common law, that the Ade mirall Court is no Court of Record, and therefore not able to take fuch ftipus lations: and hereupon Prohibitions are granted to the atter overthrow of

that jurisdiction.

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The Court of the Admiralty proceeding by the Civill law is no Court of The Answer, Record, and therefore cannot take any fuch Recognifance as a Court of Record may do. And for taking of Recognifances against the lawes of the Realme, we finde that Prohibitions have been granted, as by law they ought. And if an erros neous fentence be given in that Court, no Wirit of Erroz, but an Appeale befoze totain Delegate do lye, as it appeareth by the statute of 8 Eliz. Regina, cap. 5. 8 Eliz.cap. 5. which probeth that it is no Court of Record.

That Tharter-parties made only to be performed upon the feas are daily with- 4 Objection,

mawn from that Court by prohibitions.

If the Tharter-party be made within any City, Port Tolon, or County of The Answer, his Realm, although it be to be performed either upon the feas, or beyond the leas, pet is the same to be tried and determined by the ordinary course of the Common law, and not in the Court of the Admiralty. And therefore when that Court hath incroched upon the Common law in that case, the Judge of the Admiralty and party fuing there have been prohibited, and oftentimes the party condemned in great and grievous damages by the laws of the Realm.

That the Clause of Non obstance flaturo, which hath foundation in his spajetties 5 Objection, Deerogative, and is current in all other grants, pet in the Lood Admirals Datent is faid to be of no force to warrant the determination of the causes committed to him in his Lozdinips Patent, and so rejected by the Judges of the

Without all question the statutes of 13 R. 2. cap. 3. 15 R. 2. cap. 5 and 2 H.4. The Answer. cap. 11. being statutes declaring the jurification of the Court of the Admirall, 13 R.2 cap. 3. and wherein all the subjects of the Realm have interest, cannot be dispensed with 15 R-2. cap. c. by any Non obstance, and therefore not worthy of any answer: but by colour 2 H.4.cap. 11. thereof, the Court of the Admiralty hath contrary to those Acro of Warliament incroched upon the jurifdiction of the Common law, to the intolerable griebance of the subjects, which hath oftentimes urged them to complain in your Pajecties Courts of ordinary Justice at Westm. for their relief in that behalf.

To the end that the Admirall jurisdiction may receive all manner of impeach 6 Objection, ment and interruption, the Rivers beneath the first Bridges, where it ebbeth and floweth, and the Posts and Creeks are by the Judges of the Common law affirmed to be no part of the feas, not within the Admirall jurifolition: and thereupon Poohibitions are usually awarded upon actions depending in that Court, for Contracts and other things done in those places; notivithstanding that by use and practise time out of mind, the Admiral Court have

had jurisdiction within such Ports, Creeks, and Rivers.

The like answer as to the first. And it is further added, that for the death The Answer. of a man, and of maybem (in those two cases only) done in great thips, being and hovering in the maine Areams only beneath the points of the same Rivers nigh to the fea, and no other place of the same rivers, not in other causes, but in those two only, the Admirall hath cognisance. But for all contracts, pleas, and querels made or done upon ariver, Haven, or Creek, within any County of this Realm. the Admirall without question bath not any jurisdiction, for then be hould hold plea of things done within the body of the County, which are triable by verdid of twelve men, and meerly determinable by the Common law, and not

within the Court of the Admiralty according to the Civil law. For that were to change and alter the laws of the Realm in those cases, a make those contrains, pleas, and querels triable by the Common laws of the Realm to be diamonal aliud examen, and to be sentenced by the Judge of the Admiralty according to the Civil laws. And how dangerous and penall it is for them to deal in their cases, it appeareth by judiciall presidents of former ages. See the answer to the first Article.

The 7. Object,

That the agreement made in Anno domini 1575, between the Indges of the kings Bench and the Court of the Admiralty for the more quiet and certain execution of Admirall jurisdiction is not observed as it ought to be.

The Answer.

The supposed agreement mentioned in this Article hath not as yet been belibered unto us, but having heard the same read over before his Pajetty (out of a paper not subscribed with the hand of any Indge) we answer, that for so much thereof as different from these answers, it is against the laws and statuted of this Realm: and therefore the Judges of the kings Bench never assent thereunto, as is pretended, neither both the phrase thereof agree with the tearms of the laws of the Realm.

The 8. Objett.

spany other grievances there are, which in discussing of these former wil easily appear worthy also of reformation.

The Answer.

This Article is fo generall, as no particular anfiver can be made thereunts. only that it appeareth by that which bath been faid, that the Lord Admiral his Officers and Dinifters principally by colour of the faid boid Non obstante. and for want of learned advice have unfully increached upon the Common laims of this Realm, whereof the marbail is the lette, for that the 1.020 Admirall his Lieutenants, Officers, and Pinisters have without all colour incroached and intruded upon a right and prerogative due to the Trown, in that they have the fed, and converted to their own uses goods and thattels of infinite value taken by Wirats at Sea, and other goods and chattels which in no fort appertainm to his Lordhip by his Letters Patents, wherein the faid Non obstance is contained, and for the which be and his Officers remain accountable to his Bail Mp. And they now wanting in this bleffed time of peace causes appertaining to their naturall jurisdiction, they now increach upon the jurisdiction of the Com mon-law, left they thould fit idle and reap no profit. And if a greater number of prohibitions (as they affirm) hath been granted fince the great benefit of this happy peace, then before in time of hostility, it moveth from their own increase ments upon the jurisdiction of the Common law. So as they do not only unjusty incroach, but complain also of the Judges of the Realm for boing of justice in this cales.

Touching our proceedings in granting of prohibitions concerning any of the said Articles, two things are to be considered of. First, the matter; and secondly, the manner. For the matter nothing hath been done therein by your spacesties Courts at Westminster, but by good warrant of law and somer judiciall president. And so, the manner, we have granted none in the time of Tacation, nor in the Term time in any of our Chambers, nor in the Tourt in the Term time ex officio, but upon motion made in open Court by learned Councell, and after a day presided, and warning given to the adverse party, and upon reading of the Libell in open Court, and hearing of the Councell learned of such of the parties as were warned and did aftend.

The faid answers are proved and confirmed (as is aforefaid) by three kind of Authorities in law. First, by Authority of the High Courts of Parliament. Secondly, by Indoments and judiciall presidents. Thirdly, by Book-cases, and

the authority of our Books.

¶ 1 By Acts of Parliament, 1; R.2. cap.5.

Concerning the Acts of Parliament: It is enacted by the statute made in 13 R.2.ca.5. That the Admirals and their Deputies shall not meddle from henceforth with any thing done within the Realm of England, but only with things done upon the sea, according to that which hath been duly used in the time of the Noble King Edward Grandsather of King R.2. By the which it is manifest.

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that the jurisdiction of the Court of Admiralty is only sonfined to things done mon the fea, which the adverse party peelded, but claimeth by a colour of a Non

obstante,&c. which is utterly boid, as hath been faid.

By the statute of 15 R.2.cap.3. It is enacted and beclared, That the Court of 15 R.c.ca.3. the Admirall hath no manner of conusance, power nor jurisdiction of any manner of contract, plea or querell, or of any other thing done or rifing within the bodies of the Counties, either by land or by water, and also of wreck of the sea, but all such manner of contracts, pleas, and querels, and all other things rifing within the bodies of the Counties as well by land as by water, as is aforesaid, and also wreck of the sea shall be tried, termined, discussed, and remedied by the laws of the land, and not before, nor by the Admirall nor his Lieutenant in no manner. Nevertheleffe of the death of a man, and of a mayhem done in great thips, being and hovering in the main stream of the great rivers only beneath the points of the same rivers, and in no other place of the same rivers, the Admirall shall have connsance. This latter clause giveth the Admirall further surisdiction in case of death and maybem. (with neither of which we ever medled) but in all other happening within the Thames, or in any other River, Port, or water, which are within any County of the Realm, (as all Rivers and Havens be, as hereafter thall manifettly appear) by expreste words of this Act of Parliament, the Admirall or his Deputy hath no jurisdiction at all. Wherein it is to be observed, how curious the makers of this fatute were to exclude the AD. mirall of all manner of jurisdiction within any water which leeth within any County of the Realm.

The statute of 2 H.4. cap. 11. enasteth, That the faid Act of 13 R.2. cap. 5. be 2 H.4.cap. 11. firmly holden and kept, and put in due execution, and further at the prayer of the Commons that as couching a pain to be fet upon the Admirall or his Lieutenant, that the statute and Common law shall be holden against them, and the party grieved shall recover his double dammages. By which Act it appeareth, that the fratute of 13 R.2. is but an affirmance of the Common law, as shall als so manifestly appear hereafter.

Which three Ads cannot be dispensed withall by a Nonobstance, as hath been fato before, but remain in full force, and bath been put in due execution in

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The flatute of 27 Eliz.cap. 11. describeth particularly the limits of the Lord 27 Elicap. 11. Admirals jurisdiction in these words. All and every such of the said offences before mentioned, as hereafter shall be done on the main sea, or coasts of the sea, being no part of the body of any County of this Realm, and without the precinct, jurisdiction and liberty of the Cinque ports, and out of any Haven or Pier, shall be tried and determined before the Lord Admirall, &c. 50 as by the sungment of the whole Parliament the jurisdiction of the Lord Admirall is wholy confined to the main fea, o; Coaffs of the fea being no parcell of the body of any County of this Realm.

And by thefe four Ads of Parliament all the faid objections that have been made, or can be made against the proceedings of the kings Courts at Westminfer (being grounded on the same) are fully answered. And we will conclude this first part with the saving of God himselse. Almighty God (as he himsels out of Job 38.8 10,111. a whirliving fpake) hath that up the fea within certain dozes and bounds, Quis conclusit offis mare, quando erumpebat, quasi de vulva procedens : circumdedi illud terminis meis, & posui vectem & ostia, & dixi, Usque huc venies, & non procedes amplius, & hic confringes tumentes fluctus ejus.

Concerning the fecond kind of proof, viz. by Judgments and judiciall prefit q 2. By judgebents, every of them in all fuccestions of ages in ferie temporis, taking some mets & judicial

in every age for many that might be cited.

Regifter Origin, fo. 129. F.N. B. 114. If goods be taken from an Englith man Regift. Origin. in Spina beyond the Sea, and the party cannot obtain justice there, he that have foliage F.N.B. a writ to the Sherif to arrest the body of the offenders, and to feife of their goods 114. to the value: which proveth that the Admitall cannot hold plea thereof; for that

presidents.

the party hath remedy by the Common law, and the Admirals power is only Sq.

per altum mare.
Hil. 6 H. 6. Rot. 303, in the Court of Common pleas between John Burton

Hil.6 H.6. Rot.303 inBanc.

In Portu.

Plaintif, and Bartholomew Put Defendant, the cale was this upon the faid fla futes. The faid Bartholomew fued the faid John Burton in the Admirall Court before Thomas Duke of Ereter then Admirall of England, for that the faid John Burton with force and arms the fecond day of September , anno 1 H. 6. three thips of the lato Bartholomew with his priloners and merchandizes to the balue of 960, marks, 5. s. 5. d.ob. in the same thips being did take and carry away, sim. poling by his libell the fame to be taken away, super altum mare, upon the high Sea. Although the taking afozefaid was infra corpus Comitatus in Briftow (the fato thips lying in the Haven of Briftow) and not upon the high Sea, contrary to the form and effect of the faid fratutes; the parties descended to an iffine which was found for the Plaintif and dammages affelled for the Plaintif to 700.1 And it appeareth by the Record, that this being the first case that we can pet find that received judgment in the Court of Common pleas upon the faid fra tutes, the same depended in advisement and deliberation eight Terms: and then the record faith, Et super hoc audito tam recordo quam veredicto pradicto, & per Curiam plenius intellect': Confideratum est quod præd' Johannes Burton recuperet verss' præfat' Bartholomæum damna sua prædicta occasione attachiamenti, profecutionis, & vexationis, quam mifarum & custagiorum ad septingentas libras per Juratores prad'inperius affeis' in duplum per statutum, &c.qua damna in duplo se extendunt ad mille & 400, l. & idem Barth, pænam decem librarum erga dominum regem nunc per idem flatur'incurrat, & capiatur, & querens remittit 400.1. Apon which Judgment four things are to be observed. First, that it is contemporanea expositio, being made within twenty years of the making of one of the faid statutes, and contemporanea expositio est optima. Secondly, that albeit the faid three thips with the prisoners and merchandizes in them lay in the Baben, inter fluxum & refluxum aque, and infra primos pontes, pet that the Baben is infra corpus Comiratus, and that for taking of the thips & the prisoners. and merchandizes in the same no fuit ought to be in the Admirall Court, but at the Common law. Thirdly, that the Court of Admiralty bath no jurisdiction but Super alcum mare, which is not within any County, for the Record faith, that the faid three thips with the prisoners and merchandize in the same, Did Ive infra

Pasch 12 H.6. Rot. 124 in banc. tur. But to proceed.

In Portu.

a Mich. 31 H.6 Rot.315, in banc, Hil. 2 Ph.& Mar. Rot.130 Cr. a prohibition upon a charter-party. Hil. 17 Eliz. Rot. 410. Cr. Spencers cafe, nd infinite others upon Charter-parties. Pasch. 12 H 6. Rot. 124. a like action brought by Robert Cupper upon the said statutes in the Court of Tommon pleas (reciting the said three statutes) against John Rayner of Porwich for that the said Rayner did sue the said Cupper in the Court of Admiralty before John Countee of Huntingdom and Ivery Lieutenant to John Duke of Bedford Admirall of England, for that Rayner having a ship In Portu aque Jernemuthe infra corpus Com' Norst, ready sor a Moyage to Zealand, the said Cupper entred the said ship lying in the said Haven, and took away divers goods in the same being, afterendo per predictum placitum res illas super altum mare emersissen, act i res illas super altum mare emersissen, cum non idifed apud Jernemutham contra formam statutomm pred', which also sproveth that the Haven is within the body of the County.

Comicat Bristolia, & non super altum mare, as the Plaintis in the Admirall Court supposed the same to be. Lastly, that judgment so solenmly, and with such advisement given, if it were alone, were sufficient to give full satisfaction in this point: for Judicium est canquam juris dictum, and Judicium pro veritate accipi-

Rot. 130 Cr. 2 dewell and the same Terme in the same Court a like action between John Wiprohibition upon a charter-party.

a charter-party, one effect we omit.

Mich 31 H.6. Rot. 315. between William Hore, and Jeffery Union for a fult in the Court of Admiralty before Henry Duke of Ereter, Admirall of England, concerning a contract of four core pounds upon a Charter party of affrait of a thip of the laid Jeffery called the Arinity of Partiew to goe from the Port of

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Bole towards the parts of Heland, cum contractus ille apud novam Sarum infra corpus Comicatus, & non super altum mare factus et junctus fuit, contra formam flatutorum prad'. The Defendant pleaded to illue, which was found against him, and dammages affelled to a hundred marks, and coffs to forty pound: and thereupon judgment is given by the Court, that he Could recover his damma. ges in duplo, according to the flatute-te. Which judgment directly probeth, that if a Charter-party of any other contract be made within City, Town, or County of the Realm, though the performance therereof be to be done and performed up. on the high Sea, yet the Admirall hath no jurisdiction, because it may be tried by the Tommon law, as by the faid Record it appeareth. But where the whole is to be done super altum mare, and no part of it infra corpus Comitatus, the AD. mirall bath jurisdiction.

The flatute of 32 H.8, c.14. Concerning fraights of thips gibeth to the Lord 32 H.8.ca.14. Annirall of his Deputy power to make Certificate concerning the thips of A. liens in Ports, tc. And if the Lord Admirall or his Deputy be not reliant, then it giveth power to the Cultomer and Controller, or their Deputy to make Cutificate: but without question this giveth no power to the Lord Admirall to hold plea of fraights of thips moze then he had before no moze then it both to the automer and Controller, to whom equall power to given by the Act to make Certificate concerning the thips of Aliens, sc. in the ablence of the Load Admirall of his Deputy, as to the Lord Admirall of his Deputy being prefent; and pet no man will affirm, that the Customer & Controller can bolo plea of fraights.

Mich, 38 H.6. Rot, 36.c r. A Premunite brought by John Caffy Cfquire, Qui um.&c. againft Richard Beuchamp, Thomas Paunce Ciquires,and athers upon Rot. 36. cr. the fratute of 16 R.a. for futing in Curia Romana vel alibi, of matters belonging to the Common law. For that the Defendant did fue the Plaintif in the Admirall Court before Henry Duke of Ercetter, that the faid John Caffye did take and carry away certain Jewels super alum mare, ubi idem Johannes Casive bona illa apud Stratford at Bowe infra corpus Comitatus Midd' & non super altum mare cepit, which is so evident, and of so dangerous consequent, as no application wall be made thereof.

In the book of Entries fo.23. tit. Abmiralty, it appeareth that the taking of Book of Entries. a hip called the Trinity of London lying upon the River at E. in the County fo.23. of Bent is not super altum mare, but infra corpus Comitatus Kantia, And thereforea fuit for the taking of that thip lying there in the Admirall Court before John Carl of Buntington Admirall of England appeareth to be against the fato flatutes, and pet no question that taking was infra fluxum & refluxum maris,& infra primos pontes.

9 H.7. A Bremunire brought for a fuit in the Admirall Court before John Book of Entries, Carl of Drfo; to taking and carrying away quandam naviculam apud Horton Key at Southlyn,&c. Supposing the same to be super alcum mare, where it was infra corpus Comitatus.

Mich. 16 H.8, Rot. 140. The River of Thames at Belingigate is not within Mich. 16 H.8. the jurisdiction of the Admirall, but infra corpus Comitatus.

35 H.S. A probibition to John Dudley Enight, Attcount Life for holding plea Book of Entries. in the Court of Admiralty for a contract made in Rivo Thamelia, Supposing the Ubisupra. same to be super altum mare, where in truth it was in Rivo Thamesiz apud B. in Com' Effex, which not with tanding was infra fluxum & refluxum aqua, & infra primos pontes,

Hil. 36 H.8. Rot. 38. cr. The like probibition inter Wheler & VVarner, Eo- Hil. 36 H.8. dem termino Rot. Inter Tooly & Lewes, a prohibition for a contract made at Rot. 38.c r. Danlike, in partibus transmarinis. And in a lac. Regis, the whole Court of Com. Hil.a Jac. Regis. mon pleas, because the libell supposed the Act to be done in partibus exteris & Incommuni Banc, transmarinis, granted a probibition.

mimarinis, granted a prohibition.

Trin 38 H. 8. Rot. 26. between Crane and Bell a promise made at Dertmouth, linfun Quer's Philips Def. that a thip called the Hary Fortune thould patte fately without taking and fur: Tr.38 H.8.Roc. piling, tc. which thip was after taken by the Spangards super alcum mare 126.

Rot. 140.

Int' Theodor Tom.

Tr. 3 & 4 Ph.& Banco.

Fodem Termino Rot. III.in Banc.

Hil.4 & 5 P.& M.Rot.831.

Mich.39 & 40 El. Rot.3158.

Mic. 3 Jac. in Scaccar'.

See in the Chapt. of the Court of the Constable, and Marshal. ¶ 3. By bookcases and authorities in law. Temps E. I.A. vowry 192. in Communi banc.

8 E.z. tit. Coron.

399.

43 E.3. Vid. 5 E.3.3. Tit.Replevin.41.

Pafch. 17 El. in scaccario.

Tr. 3 & 4 Ph. & Mar. Rot. 709, between Lawrence Masherode, and Richard Mar. Rot. 709. in VVyn, a prohibition out of the Court of Common pleas to the Court of the Anmiralty, VVilliam Lord Howard then Lord Admirall being.

Tr. 3 & 4 Ph. & Mar. Rot, 811. the like prohibition granted out of the fame Court to the Court of Admiralty between Robert Inne Plaintif, and Roser Garland Defendant.

Hil. 4 & 5 Ph. & Mar. Ror. 831. the like probibition.

Many are the prelidents in the reign of the late Queen Eliz. in the Court of Common pleas, the Kings Bench and Erchequer, which we purposely omit, and infift rather upon the moze ancient, pet one or two we will remember concerning things happening beyond Sea, whereupon an action did lye at the Common lain agreeable with the president in the reign of H.8.

Mich. 39 & 40 Eliz. Rot. 31 58, A prohibition out of the Court of Common pleas for a fuit in the Admirall Court upon a bill under the parties hand and feal for French crowns, for that the bill was made beyond Sea.

And Mich. 3 Iac. a prohibition was granted in the like case to the Admirall Court by the Court of Cichequer, for bir Iohn Swinarton having the priviledne of that Court for a matter riling beyond the Sea. And divers prohibitions granted also in the like case in the Bings Bench.

For causes of actions which are transitory bone out of the Realm, an action map loe at the Common law, but if the cause be criminall or locall bone beyond Sea, then before the Constable and Barchall only.

Concerning the last manner of proof, viz. by Book cafes and authorities of our books.

In the Register the most ancient book of the law, fo. F. N. B. fo. 87, I, &

In Temps E.1. Tit. Avowry 192. a Replebyn was brought for the taking of a thip in the Coast of Scarbozow in the Sea, and for carrying the same from thence into the County of B. Murford the Plaintif counteth of a taking in the Toalt of Scarbozow, which is neither town noz place, out of which a Jury may be taken, for that the Coast is four miles long, and also of a thing done in the Sea, this Court bath no conulance, for certain judgment is aften thereof to Bariners. Berry Chief Buftice of the Common place; the king willeth, that the peace be as well kept on the Sea, as on the land, and we find that you are come hither by due processe, and therefore ruled him to answer. Dut of which Four things are to be observed. First, that it is called the Sea which is not with in any County from whence a Jury may come. Secondly, that the Sea being not within any County) is not within the jurisdiction of the Court of Common pleas, but belongs to the Admirall jurisdiction. Thirdly, that when the thip came within the River, then it is confessed to be within the County of Porthumbers land. Laftly, that when a taking is partly on the Sea, and partly in a River, the Common law thall have jurisdiction.

8 E. 2. tic. Coron. 399. It is no part of the Sea, where one may fee what is bone of the one part of the water, and of the other, as to fee from one land to the other, that the Cozoner Chall exercise his office in this case, and of this the Country may have knowledge; whereby it appeareth that things done there are triable by the Country (thatis, by Jury) and confequently not in the Admirall Court.

43 E.3. Norff, as the faid Load Dier boucheth the Record in Mich. 15 & 16 El. faging (quod vidi) the case was, that the Abbot of iR amsep was seised of the mannot of Brancaster in Post. bordering upon the Sea, upon sirty acres of marsh of which manno; the Sea did flow and reflow; and pet it was adjudged parcell of the Abbots mannoz, and by consequence within the body of the County unto the low water mark.

And it was adjudged Pasch. 17 El. in the Erchequer, Diggs being Plaintif,

that the land between the flowing and reflowing of the fea belonged to the Lord of the Pannos adjoyning, as the Lord Dier both there report.

48 E. 3. 3. If a mariner makes a covenant with me to ferve me in a thip up- 48 E.3.3. mthe fea, yet fi lower ne foir paysit thall be bemanded in this Court by the Com-

mon law, & ne per la ley de mariner.

46 E. 3. tit. Conulans 36. An Action of trefpalle was brought for taking of a 46 E.3. tit. Cobiy in the haven of Bull against certain perfons ; the Paio; and Bailiffeg of nulans 36. Bull demanded conusance by the Charter of the King granted unto them, that the Citizens and Burgettes of Bull Mould not be impleaded alibi de aliquibus transgressionibus.conventionibus & contractibus infra burgum, &c. quam infra borgum. And the Conulans was granted; which probeth that the Baben of Bull where the thip did ribe was infra Burgum de Hull, and by confequence Infacorpus comitatus, and determinable by the Common law, and not in the Ad. mirall Court.

7R.2. tic. trespasse in Stathom pl. 54. In trespasse for a thip and certain merchandise taken away (which trefpalle muft of necellity be alledged in fome Town and County in some River of Haven) the defendant pleaded, that he did take them In le haut mere ove les Normans queux font enemies le roy, And it is ru-

to a good plea, which concurreth with the other books.

7H.6. 22. 35. An Action lieth at the Common law for foreftalling, tt. in a 7 H.6.22.35. Bot of Baben, for that it is infra corpus comitatus, and triable by the Common

law, and by confequence the Admirall hath no jurisdiction there.

19 H.6. 7. The fratute doth reftraine that the Admirall hall not hold plea of 19 H 6.7. any thing riling within any of the Counties of the Realm, but erecutions be map make upon the land. And therefore where it is faid in 22 Aff. pl. 93. that every 22 Aff. p.93. water, which flows and reflows, is an arme of the fea, pet it followeth not that the Admirall thall have jurisdiction there, unlesse it be out of every County, or else such a place whereof the countrey cannot take knowledge, as it appeareth in the book of 8 E.2. befoge cited. But of this moge hereafter.

Fortescue cap. 32. fo.38. Nam si quæ super altum mare extra corpus cujuslibet Fortesc. cap. 32. comitatus regni illius fiant quæ postmodum in placito coram Admirallo Angliæ fo.38. deducantur per testes, illa juxta legum Anglia Sanctiones terminari debent, which proveth by expresse words that the jurisdiction of the Admirall is confined

to the high fea, which is not within any Tounty of the Realm.

2 R.2, fo. 12. Hibernici funt sub Admirallo Angliz de re facta super altum mare, which agreeth with the former, viz, that the jurifdiation of the Admirall

is super altum mare.

Stanford lib.1.pl. cor. fo. 51. b. If one be flaine upon any arme of the fea, Stanf.pl.cor. fo. where a man may fee the land of the one part and of the other, the Tozoner Mall inquire of this, and not the Admirall, because the Country may take conusance of it, and both bouch the fait authority of 8 E.2. Whereupon he concludeth in thefe words. So this probeth, that by the Common law before the Catute of 2 H. 4. &c. the Admirall had no jurisdiction but upon the high sea, which only authority were fufficient to overrule all the faid questions. For hereby appeareth, that the jurifdiction of the Admirall is only confined by the Common law to the high fea, and agreeth with all the former Book cases and Ads of Parliament.

4&5 Ph. & Mar. Dier 159.b. By the I thell in the Admirall Court the cause 4 & 5 Ph. & Mar. is supposed to commence Sur le haut mere & infra jurisdictionem del Admiraly ubi revera facta fuit in tali loco infra corpus comitatus & non super altum mare. Whereby it also appeareth, that the Lozd Admirals power is confined to the

high fea.

Pach, 28 Eliz. in the Lings Bench the cafe was, that a charter-party by deed indented, was made at Thetford in the County of Porfolk, between Evangelift Pafch, 18 Eliz. Constantine of the one party, & Hugh Gynne of the other part, by the which Conflantine did covenant with Gynne that a certain thip thould faile with merchandizes and goods of Hugh Gynne to Puttrell in Spaine, and there hould remain by certain dayes, sc. Upon the breach of which Covenant Gynne brought an

7 R.z. Trespaffe in Stathom pl.54

2 R.3.12.

Dier 159 b.

Action of bebt of 500 li. upon a claufe in the fame Charter, and alledged the breach of the Covenant, for that the thip did not remain at Putterel in Spaine by fo many dayes as were limited by the Covenant. Thereupon iffue was ta ken and tried befoge Sir Christopher Wray Chief Buffice of England, and found for the plaintife : and in arrest of judgement it was thewed, that this istue on rife out of a place totally and meerly in a fozein Kingdome out of the Realme. from whence no Jury of twelve men could come, and therefore the triall was in lufficient. But it was adjudged by Sir Christopher Wray, Sir Thomas Gaw. dy, and the whole Court of hings Bench after great deliberation that the plain. tife should recover 500 li. besides his damages and costs, so, that the Charter party whereupon the action is brought was made at Thetford within this Realme, and that the triall being in the same place where the action was brought, was sufficient.

Mich. 30 & 31 Eliz.coram Rege

And the like cafe was after adjudged in the fame Court, Mich. 30 & 31 Elizin an action upon the case upon an Assumplit grounded upon an instrument called Policy, commonly made between merchants for affurance of their goods, when by the undertaker did assume that such a thip would saile from Belcome Regis in the County of Doglet unto Abbile in France lately without violence, tc. and declared that the faid thip in failing towards Abvile, that is to fay, in the Riber of bomne in the Realme of France was arrested by the French king, tc. where upon iffue was taken & tried, where the action upon the Affumplit was bount. and againe the validity of the trial newly questioned, and in the end resolved and adjudged as before: which judgement proves, that where part of the contractors, ther thing is made in any place within any of the Counties of the Realm, though the performance thereof be upon the high fea, the triall and determination of the whole Ac belongeth to the Common law, and consequently the Court of the Ab miralty ought not to deale there with.

These answers being belivered if king James, magna est veritas & prz.

valuit.

The Kings Prerogative of the fea, oc. The Antiqui. ty of the Court of Admirality long before the reign of E-3. in whose dayes some have dreamed it began, * In Archivis in Turri London,

Pow for the great prerogative and interest that the King of England bath in the feas of England, and for the antiquity of the Court of the Admiralty of Eng. land, and of the name of the Admirall, we have feen an ancient and a notable Re 1020, intituled, De inperioritate maris Anglia & jure officii Admiralitatis in co. dem. " So much whereof as we finde in Archivis regis, we will transcribe de verbo in verbum, as it is in the Record it felf.

A vous Seignieurs Auditors Deputes per le Rois de Engliterre & de

France a redresser les damages faits as gents de lour Roialmes & des auters

This cause was handled in or about the 22 year of E. I. as by divers parts of the Record it appeareth. Admirall of the Sea of England.

terres subgits a lour seignuries per mer & per terre en temps de pees & de trewes. Monstrent les procurours de Prelats & Nobles, & del Admirall de la mier d'Engliterre & de Cominalties des Cities & des Villes , & des Merchants , Mariners , Messagiers , & pelerins & des touts aultres du dit Royalme d'Engliterre & des aultres terres subgis a la seignurie du dit Roy d'Engliterre & daillours sicome de la marine de Genue, Cateloigne, Espaigne, Alemaigne, Seland, Hoyland, Frise, Dennemarch, & Norway & de plusours austres lieux del Empier, que come les roys d'Englitere per raison du dit Royalme du temps dont il ny ad memoire du contrarie eussent este en paiceable possession de la soveraigne Seignurie de la mier d'Englitere & des Isles esteants en ycele per ordinance et establicement des lois, estatuts, et defenses et des vefseaux autrement garnies que vesseaux de merchandise et de seurte prendre & saune gardes doner en tous cas que mestier serra & par ordinance

entre tout manere des gents taunt dautre signurie come de lour propre de

Time out of minde.

Lawes, Statutes, and Ordininces.

The Court of the Admiralty. Cap.22.

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uns aultres faitz necessaries a la garde de pees, droiture & equitie par elonques passants & per souveraigne garde & toute manere de conisance d'Inflice haulte & baffe sur les dites lois, estatuts, ordenances & defenas, & pur touts autres faits queux a le government de souveraigne Seigurie appertenir purrent es lieux avandits. Et A de B Admirall de la at mier deputey per le roy d'Englitere, & tous les aultres Admirals par De Borertort, meme celus Roy d'Englitere & ces ancesters iades royes d'Englitere eusent Sea. est en paiseble possession de la dit souveraigne garde ove la conisance & Note for the an-Inflice & touts les aultres appurtenances avantdite forprise en case daprele & de querele fait de eux a lour souveraignes roys d'Englitere de de- land. The faid falte de droit ou de malvais judgement, & especialment pur empechement metre & justice faire seurte prendre de la pees de tout manere de gents the sea coasting alants armes en la dit mier ou menans niefs aultrement apparreilles ou upon Yarmouch gunies que nappertient au nief de marchants & en touts aultres points over sgainst to queux homme poit avoir reasonable cause de suspition vers eux de France) and of robbery, ou des aultres mesfait?. Et come le maistre de Niefs du dit thit station in mialme d'Englitere en absence des dits Admirals eussent este en paisible Mesion de conustre & juger des touts faits en la dite mier entre touts manere de gents selone les lois estatuts & les defenses, franchises & cu-

Et come en le primer article de lailliance nadgaires faite entre les diau Rois en les traites sur le darreine pees de Paris soient comprises les the French King.

paroles que sensuient en une sedule annexe a yceste.

Primerment il est traite & accorde entre nous & les messagers & les prosurours de surdiz en nom des dits Roys que yceux Roys serront lun a lautre desores en avant bons verrois & loyaux amyes & eydans countre tout homme sauve Lesglise de Rome en tiels manere que si ascun ou plufours quicunques ilz fuiffent voloient deponticer, empescher, ou troubler les dits Roys en franchises & liberties, priviledges es droits, es droitures, ou es custumes de eux & de lour roialmes quils serront bons & loyaux amys & aydans countre toute homme que puisse venire & morir a defendre, gardir & maintenir les franchises, les liberties, les privileges, les droitz, les droitures, et les custumes de susdites, except le dit Roy d'Englitere Monsieur Iohn Duc de Breban en Brabant & ses heires descendus de lui third daughter & de la fille le Roy denglitere, & except pur le dit nostre seignior le of E. 1. was mar-Roy de France excellent Prince Dubert Roy d' Alemaigne ses heires Roy Duke of Reshant & Alemaigne, et Mounsieur Iohan Counte de Henan en Henan, et que lun ne serra en consaile ne en aide ou lautre perde vie, membre, estate ne ho- & 18 E.1. nour temporel. Monsieur Reymer Grimbald maistre de la navie du dit Roy Monsier Raymer de France que se dit estre Admirall de la dit mier deputey per son Seig- G-inb-ld Master nior avantdit pur sa guerre contre les Flemings apres le dite alliance of the French faite & affirmee contre le forme & la force de mesme lalliance & lintention de ceux qui la firent loffice del Admirall en la dite mier Denglitere par commission du dit Roy de France torscousement emprist & usa un an & plus en pernant le gents & marchants du roialme d'Englitere & daillours per la dite mier passaints ovesque lour biens & les gents ainsi prises livera a la prison de son dit seigniour le Roy de France lour biens & marchandizes a les resceivors per mesme celuy roy de France a ceo deputey en les ports de son dit royalme come a luy forfait et acquis fist amener per son juggement et agard, & la

Admirall of the tiquity of the Admirall of Eng-De Botertort was Admirall of in Norfolk (right

The league be-

Margaret the Duke of Brabant An. Dom. 1290.

prise et detenue des dites gents ove lour dites biens et marchandises & fon dit juggement, et agard sur la forfaiture de eaux et acquest ait justifie devant vous seigneurs Auditors en escripts per my lautoritie de sa dite commission sur l'Admiralte avantdite per lui ainsi usurpe & per une defense comunement fait per le Roy d'Englitere per my son poer lelonc la forme de le tiers article de lalliance avantdite qui contient les paroles desusceripts en requerant que de ceo il en fusse quitz & absoluts en grand damage & prejudice du dite Roy d'Englitere & des Prelats & Nobles & aultres desusnomes. Purquoy les dits procurours & les noms de lours ditz Seigniours a vons Seigniours Auditors avantditz pryent que deliverance deme & hastine des dites gents ovesq; lour biens & marchandises ainsi prises & detennes faicets estre fait al Admirall du dit Roy d'englitere a qui la conisance de ceo apertient de droit sicome dessus est dit ainsi quils sauns disturbancede vous & d'aultre puisse de ceo conoistre & faire ceo que apertient a son office avantdit. Et que le dit Monsieur Reymer soit condempne & distreint a fain due (atisfaction a touts les dits damages seavant come il purra suffire de sa defalte son dit seignior le Roy de France per que il estoit deputey al dit office, et que apres dewe satisfaction faitz as dits damages le dit Monsier Raymerson si duement punis pur le blemissement de ladite alliance, que la punision delm soit as aultres example pur temps a venir.

The Admirall of England to whom the conufance appertain, &c.

Item in alio Rotulo annexo.

Admirall of England.

Item in alio Rotulo de Articulis super quibus Iustitiarii domini Regis sunt consulendi de Anno regni regis E.3.12.

* E.1.4 yus E.3.

Item ad finem quod resumatur et continuatur ad subditorum prosecutionem forma procedendi quondam ordinata & inchoata per * avu domini nostriregu et ejus consilium ad retinendum & conservandum antiquam superioritatem maris Anglia, et nos officii Admiralitatis in eodem quoad corrigendum, interpretandum, declarandum et conservandum leges et statuta per ejus antecessores Anglia Reges dudum ordinata ad conservandum pacem et justitiam inter omnes gentes nationis cujuscunque per mare Anglia transeuntes, & ad cognoscendum super omnibus in contrarium attemptatis in eodem, & ad puniendum delinquentes et damna passis satisfaciendum. Qua quidem leges et statuta per dominum Richardum quondam regem Anglia in reditu suo à terra sancta correcta fuerunt, interpretata et in insula Oleron publicata et nominata in Gallica lingua La ley Olyronn.

R. 1. Insula de Olyron in Gallia.

Cap. 22. The Court of the Admiralty.

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And long before this Bing Edgar in his Charter faith thus: Mihi concession propiria diginitas cum Anglorum imperio omnia regna insularum Oceani cum suis ferocissimis regibus usque Norwegiam ac maximam partem Hibernia cum sua nobilissima civitate de Dublina Anglorum regno subjugare, &c.

The have also found a Record in 10 E.3. in these words.

Rex dilecto et fideli suo Galfrido de Say Admirallo Flota sua Navium abore aqua Thamesia vers partes occidentales, Salutem. Cum nuper vobis per literas nostras mandaverimus qued vos una cum quibusdam navibus de quinque portubus nostris quas de guerra pro obseguio nostro muniri et parari mandavimus supra mare proficisceremini ad obviand' et resistend' quibusdam galeis in diversis partibus exteris provisis et hominibus armatis munitis que ad partes dominii nostri ad gravand' nos et gentes nostras, velad partes Scotia in inimicorum nostrorum ibidem succursum divertere ut accepimus proponebant. Et quia jam nobis ab aliquibus est relatum quod galea hujusmodi usque ad numerum viginti et sex ad partes Britan' et Norman' noviter accesserunt et ibidem adhuc se tenent ad mala,ut creditur, contra nos et nostros que poterunt perpetrand', vel ad succurrend' dictis nofris, ut pradicitur inimicis. Nos advertentes quod progenitores nostri reges Anglia domini maris Anglicani circumquaque et etiam defensores contra hossium invasiones ante hac tempora extiterunt, et plurimum nos taderet, si bonor noster regius in defensione hujusmodi nostris (quod absit) deperiattemporibus, aut in aliquo minuantur, enpientesque hujusmodi periculis auxiliante domino obviare, ac salvationi ac defensioni regni et populi nostrorum providere, malitiamque hostium nostrorum refrenari : Vobis in fide & ligeancia quibus nobis astricti estis, & sicut de vobis specialiter confidimus, mandamus firmiter injungendo quod statim visis prasentibus et absque ulteriori dilatione naves portuum pradictorum, ac alias naves qua jam parata existunt supra mare teneatis &c.

And because the Reader by this Record thall discern, that of ancient time there were several Admirals (for the wisdome of those dayes would not truck one man with so great a charge, nor any man to have a certain estate in an office of sogreat trust.) I will briefly give the Reader such light thereof as I have found of Record.

Rexcommist Galfrido de Lucy maritimam Angliæ eustodiend' quamdin domino Regi placuerit,&c.

Rex commist Richardo Aguillum marinam regis Nors. & Suff. &c. quamdin Rot Par. anno nobis placuerit. 9 H. 3.

Perrus de Rival capitaneus Picanie habet ad totam vitam suam custodiam om-Rot. Car. 15 H.3.
nium Portuum & totius costera marina Anglia, excepto Portu de Dovor, qui est in
custodia Huberti de Burgo.

Willielmus de Leybourne constituitur capitaneus nautarum & marinariorum Rot. Vascon, deregno & potestatis regis, quamdiu regi placuerit. 22 E.1.m.8.

Willielmus de Leybourne Admirallus Angliz.

Willielmus de Leybourne capitaneus marinariorum, &c.

To let you know what we have observed in those times: there were also two other, the one had the government of all the Fleet from the mouth of the Thames Westward, and the other from the mouth of the Thames Posthward.

Johannes Boretort custos Regis Portuum maritimorum versus partes Boreales.
35 Martii.

Nicholaus Kyriell conflituitur Admirallus flote omnium Navium ab ore aquæ Thamefis tam quinque Portuum, quam aliorum Portuum & locorum per costeram maris versus partes occidentales, quamdin Regi placuerit, Teste Rege apud Turrim London & Decembris,

See this Charter in the Epistle to the 4 book of Reports,

Rot.Scotiæ 10 E.3.m.16.

Rot. Par. anno 9 H.3. Rot. Car. a H.

Rot. Vafcon, 22 E.1, m.8. Rot. Pat. 23 E.1, 2 parte Pat. anno 25 E.1.m.14. Clauf, in Dorf. m. 18.

1 parte Pat.

1 parte Pat,

Roberto

The Court of the Admiralty.

Clauf. 15 E.z. Par.15 E.z. Tefte Regeapud Ebor.

r parte Pat,anno

1 E.3.m.21.

Robertus de Leyborn Admirallus quarunda Naviu Regis sup mare occidetali. Robertus Battayli Admirallus flotz Navium ab ore aqua Thamesis de fingulis Portubus versus austrum.

ohannes Perbrome constituiturcapitaneus, & Admirallus slota Navium magna Geremuthe & omnium aliorum locorum ab ore aqua Thamesis per costeram maris versus partes Boreales,quamdiu, &c. Teste Rege apud Stamf. 21 Aprilis. Warrosius de Valloignes constituitur capitaneus & Admirallus flota Navium

ab ore aqua Thamefis tam quinque Portuum quam aliorum Portuum & locorum per costeram maris versus partes occidentales, quamdiu, &c. ut supra. Petrus Bard Admirallus Navium ab ore aqua Thamesis versus partes occiden-

cales. 18 Augusti,

2 parte Clauf. 12 E-3.in Dorf. Thomas de Drayton Admirallus ab ore aqua Thamesis versus partes Borcales. 18 Augusti.

And fo in the reigns of R.2. H.4. H.5. H.6. But in thefe and in former times there was a great Admirall of England, Vid, fapra pa. 142, 143, 144.

Rot.Par.anno 14 H 6.25 Od. 18 E.41

The Hing did by Charter conftitute John Holland Duke of Greter and Henry his fon to be Admirallos Anglia, Hibernia, & Aquitania, protermino vita.

This Charter being of a judiciall office and granted to two, we hold to be hold: for fuch ancient offices must be granted as they formerly have been. This Duke is be that is mentioned in the former Records, who being a great Beer of the Realm endeavoured to increach upon the Common law, but the subject by course of law were defended and recompensed.

Rot. Parl-7 H.4. nu.19,20.&c.26. & 142.9 H.4. Du. 19.

The Merchants, Mariners, and owners of thips undertook the lafeguard of the Seas for the Sublidies of Tunnage and Poundage, sc. and that Perchants hould name two persons, the one for the South part, the other for the Aoth part, who by Commission should have the like power as other Admirals have had touching the fame.

Addition of some Records of Parliament.

11 H.4.nu.24. Rot. Par. 17 R. 2. 48. 4 H.4.m. 47. 11 H.4 nu.61.

All Catutes made concerning the Court of the Admirall Chall be observed. Soundary towns of the West part papen remedy against the Officers of the Ab. miralty for holding plea of matters determinable by the Common law, the which they pray may be revoked: the Kings answer was, The Chancelor by the advice of the Jultices upon hearing of the matter shall remit the matter to the Common law, and grant a prohibition.

The Carl of Porthumberland Admirall of the Porth, and the Carl of De bon' Admirall of the West, to receive the Subsidy of Tunnage and Boundage. and to keep the Seas.

7 R.z.nu-14.

Addition of Books.

s part Inffit. \$ 459.8 677. 11 H.4.fo.11.

See the First part of the Institutes, Sect. 459. & Sect. 677. Where Littleton speaketh of a man out of the Realm, or beyond Sea, and adde thereunto the notable case in Mich. 11 H.4. fo. 11. pl.85. Sovingles case, the Defendant in an appeal of death being outlawed, brought his writ of Error, and affigned for error, that et the time of the Dutlaway, and before, be was in the Kings fervice upon the Sea in the company of the Lozd Berkley then Admirall, and had a writ unto him

Lord Berkeley Admiratl.

> 6 F.2. Tit. Protection 46. 7 R. 2. Tit. Trespasse Statham. 10 H. 7. fol. 7 a. Vide 18 H.6. nu.52. where the owner of a thip thall antwer for hurt done by his thip, though he be not party thereunto.

> Vid. Lacies cafe, Cr. 25 El. li. 2. fo. 93. Vid.li. 5. fo. 106,107. & 108. Sir Henry Constables cafe. Lib.6. fo.47. Dowdales cafe, Brook tic. error 177.

See certain statutes, viz. 27 E.3. cap. 13. Stat. Staple. 31 H.6.cap.4. 2 R. 3.

cap.6.28 H.8. cap. 16.

It appeareth by the former Records, that the Admiralty is sometime called Admiralitas, fometime Admirallatus, and fometime by other names, as Admirallus, Capitaneus 03 Custos maris, 03 Marina, 03 Maritania, 03 flota navium, that

The name.

Camden.

is, of the Baby floating on the Sea. Ley marine, ley des mariners.

The Officer is called Admirall indifferently both in Englith and in French. Mename him in Latin Admirallus, and the Court Curia Admiralitatis, Derfs net of Amir, id eft, Præfectus, & ands 1. Marinus, Præfectus marinus, Admiralins, Admirallus, Admiralli Curia res maritimas tractat: In hac numerantur Admirallus Angliæ, locum tenens & judex, scribæ duo, serviens Curiæ Viceadmirallii

Hada of Hitha, i. Porrus a Daben, as Dineen bithe, Lamb bithe, et. Hafne

Courts, now Baben or Port Courts, Hable, Portus,

To conclude, the Bing of Englands Raby both ercell the thipping of all other forain Bings and Princes: for if you respect beautifull statelinesse, or stately beauty, they are to many large and fpacious Bingly and Princety Bataces. If pou regard ftrength and befence, they are fo many mobing impregnable Caffies. and Barbicans, and were tearmed of old the wats of the Realm. When our enatify paren is among the thips of other pations, it is like Lions inter pecora campi, and line a fathon inter phafianos, perdices, & alia volatilia timida

Belides, no part of the world have fuch timber for building and repairing of

hips as one Ming bath.

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CAP. XXIII.

The Court of the Commission under the Great Seal by force of the statute of 28 H. 8. cap.15.

28 H.8,cap. 15.

His Tourt must be holden Coram Admirallo Anglia, seu ejus locum te- The Commission nence, and 3 02 4 fuch other fubitantiall perfons, as thall be named by the oners. Lord Chancelor for the time being.

Their jurisdiction is to hear and determine all Treasons, Felonies, Robbe: The Jurifdia ries, Burders, and confederacies committed of done upon the Seast.

These offences thall be heard and determined according to the course of the Tobe heard & Common law, and therefore some of the Audges of the Realm are ever in this determined by

Concerning the mischief that was before the making of this statute, and bow law. the faid Act hath been formerly expounded, you may read plentifull matter in the Secthe 3 part of

Third part of the Inflitutes, Cap. Piracy.

The procede and proceedings herein are in the name of the king: See before 112.8c. Cap. Chivalry, pa. 124. that the statute of 35 H.S. cap. 2. not that of 5 E.6.c. 11. taketh not away this Act of 28 H. 8. concerning treasons; Noce, that in all the Commissions granted for the execution of this Act of 28 H.S. fince the faid Acts of 35 H. 8. 5 E.6. power and authority is given to hear and determine all treas fons, tc. done upon the Sea.

the Common

the Inftit Cap. Piracy.pa. 111,

CAP. XXIV.

Of Port-mootes, alias Port courts, alias Port-mote Courtes.

Portmote is a Court kept in Haven Towns, or Ports, and thereof ta-

Portus est locus in quo exportantur & importantur merces, à portando. And they are Portx regni the * gates of the Realm. 2 Hicha and Heda often in Domesday is taken son a Haven on Port, anciently written Hasne and now Haven, by changing the finto vas is usuall.

Chery Haben is within the body of the County, te. whereof fee before plentifull matter in the Chapter of the Court of the Admiralty proceeding according to

the Ctvil law. See 43 Eliz,cap. 15.

* See in the Chapt, of the Courts of the Forest.

A Hereofcometh in London
Queenhithe, and in Lambith Lab-hithe, &c.

CAP. XXV.

The power and authority of Commissioners and others for the maintaining and erecting of Beacons, signes of the Sea, or Light-houses, and Sea-marks, and concerning Watches.

Beacon.

See the 3.part of the Inft.Cap.

buildings p. 204.

Beacon, this wood is derived of the Saron wood Beacon, i. Speculum, unde speculanturadventus hostium, and is often called Signum speculatum, and Bechan in the Saron language is signum dare, and we use the wood to bethen to at this day.

Before the reign of E.3. there were but flacks of wood fet upon high places, which were fired when the comming of enemies were descried, but in his reign pitch bores, as now they be, were in flead of those flacks of wood set up, and this properly is a Beacon.

Light-honses.

Light houses, Ignes speculatorii, seu monitorii, seu lumen maritimum, seu pharus, unde versus,

* Soo Te pare, id est, lucidum.

Lumina noctivagæ tollit pharus æmula lunæ.

These Light-houses are properly to direct Seafaring men in the night when

they cannot fee marks, and thefe are alfo Signa fpeculatoria.

Sea-marks, as Steeples, Churches, Castles, Trees, and such like so direction of Seasaring men in the day time, and these are called Signa marina, of speculatoria, of signa nauris, whereof Virgill 5 Eneids,

Sea-marks.

Hic viridem Æneas frondenti ex ilice metam Constituit * fignum nautis pater, unde reverti Sciverit,& longos ubi circumslectere cursus,&c.

* Id est insigniu.

So as you may divide Specula of figna speculatoria, of figna nautis into these branches, viz. into Beacons, Light-houses, and Sea-marks.

At the Common law none but the King only could ered any of these thick, which ever was done by the Kings Commission under the Great Seal, as taking some few examples for many.

De fignis super montes per ignem faciend'. De fignis super montes faciend'.

Rex affignavit a Henricum Epu Norwie', & Willielmum Comitem Suff. & alios, &c. (inter alia) ad figna speculatoria super montes in Com' Norf. popend'. Et similes commissiones in aliis comitatibus.

vide Rot. Clani. 1 R.2, m. 41, in Dors' pro vigiliis & ignibus speculatoriis, &

he that is delirous to fee more of Beacons, ac. and watching of the fame, let hin read the . Act of 5 H.4. which is an Act of Parliament, and Dors' Pat. Anno 28 H.6. parte 2, m. 21. in com' Kanc' & memb. 13. pro com' Norf. pro fignis, Anglice Beacons, & vigiliis. Et Dors' Pat. Anno I E.4. parte 3. &c.

But of latter times by the Letters Patents granted to the Lord Admirall he

hath power to ered Beacons, Seamarks, and Signs for the Sea, ec.

By the Act of 8 Eliz. it is provided and enacted, That the Mafter, Wardens and Affiltants of the Trinity house of Debtford frond (a company of the chiefest and most expert Masters and Governors of ships) shall and may lawfully from time to time at their will and pleasure, and at their costs, make, erect, and set up fischand fo many Beacons, marks and figns for the Sea in the Sea-shoars, and uplands neer the Seacoalts, or forelands of the Sea only for Seamarks, as to them hall feem most meet, whereby the dangers may be avoided, and thips the better come to their Ports. And all fuch Beacons, marks and figns fo by them to be enched shall be continued, renewed and maintained from time to time at the costs and charges of the faid Mafter, Wardens and Affiftants. An excellent law, that this power sauthority was given to them which had greatest skill, seeing they were moths for the latety of the Realm, and lafeguard of the lives of Seafaring men, and that there works thould be erected, and made, and continued by them at their the day, own cofts and charges, because they knew to goe the nearest way,

Beconagium fignifieth money due of papable for the maintenance of Beacons. othe watching of the fame. What punishment they incur which take down, fell, gother wife cut bown any Seamarks, fee the fato Act of 8 El, ubi fupra, where. init is to be observed, that if the person offending be not able to pay the penalty therein inflicted, he thall be deemed convict of outlaway, ipfo facto, to all confirme nims and purpoles: the like whereof we have not observed in any other statute. Wardwite, alias Warwite, 02 ward penny, to be free from contribution of mo:

nepto watches and wards.

The have out of an ancient Panulcript transcribed this ordination that followeth, which in the County of Post. bath been ever observed, and it is very mobable, that the like bath been done by like Authority in other maritime Countieg.

Ordinatio pro Vigil' observand' in Com' prædict' à Lynne usque Yermouth.

Hac igitur authoritate mandati nos Robert de Monte alto & Thomas de Bardolfe mandamus Vic' Norf. quod venire faciat coram nobis apud Nor-wic' die Mercurii infest' decollationis Sancti Johannis Baptist' prox' futur' omnes milites, omnes capit' Constabul' hundred, & Constabul' vill' & duos homines de discretior' cujuslibet villa ubi portus vel applicat' Navium in balliva sua tam infra libertat' quam extra in com' pradict ad consulend', formand', auxiliand' qualiter & quomodo dict' custod' securius pro salvatione partium illarum fieri posit, et ad faciend' quod ex parte dom. regis super pramissis injungitur. Ad quem diem nos dict' Robert' & Thomas personaliter accessimus ibidem, ac milit', capit' Constabul' hundred', Constabul' vill' cum omnibus hominibus vill' ubi applicat' Navium exist' de Portu Lynne & de Portu Tarmouth coram nobis ibidem compar', et afferuerunt, quod valde necesse effet pro salvat' totius patria quod vigill' fiant

Rot. Scotiz. ro E.z. Rot. Claus. Vasc' 10 E.3. Rot. Franc' 47 E.3.m.10. a Henricu Spencer, he of a icldier became a Bithop. b William Ulford comes Suff c Rot. Par. g H.4. nu, 24, not in print worthy to be read.

8 Eliz.cap 13.

Pafch. 1 Jac. Te was refolved by thetwo Chief Juflices, Atturny, and Solicitor, that this Act extended as well to Light-houses in the night, asto Beacons, &c. by

Convict of out-

Norf.

Robertus de Monte alto and 7 bo. de Bardolfe fit in Parliament, 14 E. 2. as Bar6s of the Realmas appeareth in the Parliament Rols.

y H.4.cap.3. Watches to be made upon the Sca coft by the number of the people, in the places, and in manner and form as they were wont to be.
Freebrigge.

Clackclose.

Smythdon.

Southgrenhoe. Laundiche.

Gallow.

Brothercroffe.

Northgrenhoe, Weyland, Gilteroffe, Grimshoe, Ersham.

Holt.

Eynsford. Hemsteed.

Northerpingha.

Southerpingha. Mitford.

Tunftead. Humbleyard, Fowrehoe, in locis periculosis sicut * antiquo more sieri solebant juxta mare. Et quod omnes homines corpor valid de Com Norf. contribuend ad ill faciend, per quod ordinat et censens eorum concordat est quod dua vigill per sex homines de corpore potenti tam per dies quam per noctes sieri in hundred de Freebrigge, viz. apud Wolverton, et apud Clencherne, eo quod dict hundred jung semari à Wisbiche usque Dersingham per 14. leucas. Et quod quilibet vigilans capiet per diem et per noctem pro vadiis suis 3. d. Et quod hundred de Clackclose adjung eidem hundred de Freebrigge ad contribuend ad vigill illa faciend, viz. pro qualibet septiman 45.6 d. et idem hundred. de Freebrigge 65. pro septiman. Et sciend est 77. vill continentur indict hundredo qua assignantur ad dict vigill faciend.

Fiat etiam una vigill' apud Southlynne in Clinchern, &c.

Item quod una vigill' fiet in hundred de Smithdon apud Thornham profex homines, eo quod dictum hundred' jungit se mari de Dersingham usq. Deepedal fenn per 12. leucas. Et quod Hundred de Southgrenhoe et Laudiche adjung' eidem hundred' de Smythdon ad contribuend' ad vigill' ill' faciend', viz. hundred de Southgrenhoe 3 s. 6 d. per septiman' et hundred de Landiche 4 s. per septiman', et hundred de Smythden 3 s. Et continent' in dict' hundred' 79. vill' ad vigill'illa faciend.

Et fiat una vigill' in hundred de Gallowe apud Burnham per 4. homines, eo quod dict' hundred' jungit se mari de Deepedale usque Holkham per 3. leucas. Et hundred' de Brothercrosse adjungit' eidem hund' ad contribuend' ad vigill' ill' faciend', viz. hundred' de Brothercrosse 3 s. per septim' d'idem hundred' de Gallowe 4 s. per septim'. Et sciend' est 45. vill sum in dict hundred' ad vigill' illa faciend.

Item fiet un' vigill' in hundred' de Northgrenhoe apud Holkham pa 6. homines, eo quod dict' hundred' jungit se mari, a Holkham usque Marston per 6. leucas. Et hundred' de Weyland, Gilterosse, Grimshoe, Ersham adjung' eidem hundred' ad contribuend' ad vigill' illa faciend', viz. Weylond 2 s. per septim', Grimshoe 2 s. per septim', Gilterosse 2 s. per septim', Gilterosse 2 s. per septim', & Frsham 2 s. per septim', & idem hundred' de Northgreuboe 2 s. per septim'. Et sciend' est quod 76 vill' sunt in dict' hundred ad vigill' ill' faciend.

Item fiet unum vigill in hundred de Holt apud Wabornn per sex homines, eo quod dict hundred jungit se mari à Marston usque Sheringham per Jeucas. Et hundred de Eynsford & Hempsteed adjung eidem hundred de Holt ad contribuend ad vigill faciend, viz. Eynsford 4s. per septim, Hemsteed 3 s. 6 d. per septim & idem Hundred de Holt 3s. per sept. & sciend. est quod 70 vill. sunt in dict hundred ad vigill ill faciend.

Item fiet unum vigill in hundred, de Northerpingham in duobus locu, viz, apud Runton & Trimmingham per 5 homines, eo quod dict, hundred, jung, se mari à Sheringham usque Munssye becke per decem leucas, & hundred, de Southerpingham & Mitsord cum vill, infra libert' adjung, eidem hundred, ad vigill' illa facienda, viz. Southerpingham 65.8 d. per sept. Mitsord 35.6 d. per sept. & Northerpingham 125.6 d. per sept. Et sciend, est quod 77. vill. sunt in hundred, prad, ad vigill, ill, faciend.

Item fiet unum vigill. in hundred. de Tunsted-apud Bastwick per sex homines, eo quod dict. hundred jungit se mari à Munstey usque Walcote per Aleucas. Et bundred. de Humbleyard & Fowrehoe adjung. eidem hun-

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ared, ad contribuend, ad vigil. ill. faciend viz. Humbleyard 3 s per fept. powrehoe 3 s. per sept. & Tunstead 4 s. 6 d. per sept. & sciend. est quod 76. vill. funt in diet. bund. ad vigil. ill. faciend.

Item fiet unum vigil, in bundred, de Happing in duobus locis, Viz. apud Happing, Happi (borow per 4 homines & apud Wastue sham per 4 homines, eo quod dict. hund. jungit se mari à Walcote usque Wimbesdele in loco periculoso per 6. lucas. Et hundred. de Taverham, Depwade, Shropham & Diffe adjung. eidem hund. de Happing ad contribuend, ad vigil. ill. faciend, viz. hund, de Taverham 2 s. per fept. Depenade 3 s. per fept. Shropham 5 s. per feptim. & Diffe 2 s. per fept. & dict. hund. de Happing 2 s. per fept. Et sciend. eft quod 60. vill. funt in hund. pradict. ad vigil. ill. faciend.

Item fiet unum vigil. in hund. de Eastflegge & Westflegge in tribus locis Eastflegge. viz. apud Winterton per 6 homines, apud Saltivos haven per fex homines. f apud Fordham per fex homines, eo quod ditt. hund. jungit fe mari a Wykildock nique Bunton in Mitford in loco periculofo per 7 leucas. Et hund. de Wallham. Walfham, Blowfeild, Loddon, & Clavering adjung. eidem hund. ad contri- Blowfeild. buend. ad vigill. illa faciend. viz. Walsham 4 s. 6 d. per sept. Blowfield Clavering. 15.6d. per fept. Loddon 5 s. 6 d. per fept. Clavering 5 s. 6 d. per fept. Westflegg 2 S. per fept. East flegg 2 s. per fept. Et sciendum est quod 102 vill. Sunt in dict. hund. ad vigil. ill. faciend.

Pracept. est omnibus capital. Constabul. de hund. adjung. mari in locis predict. in forma predicta hac instant. die dominica prox. futur. & similiter pracept. est eisdem capital. Constabul. & omnibus aliis subconstabul. hundred. totius Com. quod fine dilatione levari & reparari fac. figna & fierbares super mont. altior. in quolibet hund. Ita quod tota patria per illa signa quotiescunque necesse fuit premuniri posset, & quod ipse Constabul. capital. pravizam. Constabul. villaru & alioru proboru hominu agist.fac. fideliter denar. pro vad. vigil. in hundred. pradict. instant. quod ordinat. solvend. deseptimana in septim. ita quod defeit. in vigil. pradict. nullo modo inveniaur per corum defect. & similiter quod omnes qui agist. sunt ad arma & pment. ad portanda arma, & omnes illi qui loco potent. ad arma sua portanda asignat. sint providi & parati sint indies notte ad veniend. solemniter distinct. & aperte in prasent. domini Walteri de Norwic. Episcopi juxtanos asiden, ibidem cur. * Cacar. totius Com. Norf. coram nobis vn. fecimus * Vigiliarium, proclamar. Et similiter pracept. est Vic. quod levar. fac. denar. agist. in hundred. pradict. procostis & vad. prad. solvend.

For watches, and against night-walkers, fee the statute of Winch. 13 E. 1.

cap 4. 5 E.3. cap. 14. Vid. 5 H 7.5.

Vide Lamb, inter leges Edovardi regis, fo, 1 36. b. & inter leges Willielmi Regis fo. 1 2 5.2.

Quod homines de Larkefield, Filbarow freet, Newchurch, & VVorth in Com' Kanc' tenentur facere vigilias in Romney Marsh.

Dorf. Clauf. 8 H 4.m.8.& 10,

CAT. XXVI.

De Conservatore seu custode Treugaru, i. Induciaru & salvorum Regis Conductuum,

And incidently of the office, authority, and priviledge of Ambassadours; And of Leagues, Treaties, and Truces.

2 H.g.ca.6.ftat. 1

20 H.6.cap 11.

By the Catacte of 2 H. 5. robbery, spoyling, breaking of Truces, and late Conducts by any of the Kings liege people and subjects within England, Ireland, and Males, or upon the main sea, was adjudged and determined to be High Treason: but this Branch concerning High Treason is repealed by the Catute of 20 H.6. But by the said Ac of 2 H.5. for the better observation of truces and safe conducts, Conservator induciarum & salvorum regis conductum was raised, and appointed in every Port of the sea by Letters Patents: His office was to enquire of all offences done against the Kings truces and safe conducts upon the main sea (out of the Counties, and out of the Liberties of the Cinque-ports) as Admirals, of custome, were wont.

It concerneth the Iurisdiction of divers Courts, and especially of the said Court before mentioned upon the said statute of 28 H.8. and of the Court of the Admiralty, to know the rights of Leagues and Ambassadours, as far as the

laines of England ertend unto, for of them we will only treat.

All leagues of fafe conducts are, of ought to be of record, that is, they ought to be inrolled in the Chancery to the end the fubient may know, who be in amity with the King, and who be not: who be enemies, and can have no action here; who in league, and may have actions perforall here. * In all treaties, the power of the one party and the other ought to be equall.

er of the one party and the other ought to be equall.

A league may be broken by leavying of war, or by Ambaliadour or Herald.

Bryan held opinion in 19 E. 4. ubi supra, that if all the subjects of England would make war with a king in league with the king of England without the assent of the king of England, that such a war was no breach of the league, See

the Catute of 2 H.s. cap.6. in the Preamble.

In the Duke of Poil. cale Hil. 14. Eliz. the question was, whether the Loid Herife and other subjects of the King of Scots, that without his assent had was seen and burnt divers Downes in England, and proclaimed enemies, were enemies in law within the Catute of 25 F.3. the league being between the King and the Scot: and resolved that they were enemies.

And in the Bilhop of Rosses case, Ann. 13 Eliz. the question being, An legatus, qui rebellionem contra principem ad quem legatus concitat, legati privilegiis gaudeat, & non ut hostis poenis subjaceat. And it was resolved that he had lost

the priviledge of an Ambalfadour, and was subject to punifoment.

Samuel Palache affirming himselse to be the Subject and Ambassadour of Mula Sedan King of Pozocco to the States of the united Provinces, to treat and negotiate with them of divers matters between them; and they of the united Provinces having accepted him sor an Agent or Legat. And the last of Iune 1611, there being enmity between the King of Porocco and the King of Spaine, the King of Porocco made a Commission to the said Samuel to take Spaniards and their goods. The 25 of Daober 1613, the King of England gave him Letters of safe conduct as a publick Pinister sent to the States of the united Provinces. 3 Marcii 1613, the States licensed him to leavie men to surnish his thips, 3c. In Iune 1614 he took a Carvell of the Spaniards at the Ca-

19 E.4.6.b. 18 H.6.cap.4. 20 H.6.cap.1. Vide fupra.p.132 * Regula.

19 E.4.ubi fupra. See the third part of the Instit. cap. Treason. Verb. League. 2 H.5. cap.6. Hil.14 Eliz.

Hil. 13 Eliz.

Hil.12 Jac.

Carvel, or Caravel, is a swift Ba: k.

naries laden with Sugar, and another thip there also laden with Hides, of the goods of Spaniards; and after, with diffreffe of wind, he with the faid Brifes mas ditten to Plimouth, there being at that time league both between Eng. land and Spain, and between England and the united Provinces, and wars between Spain and the united Provinces. And against this Samuel the Spanish Ambaffabour here in England complained at the Councell Table, and charged him with Biracy. The faid Samuel and his company being arrefted, and the goods feifed, the Spanith Ambaffadour praged that he might proceed againft him as a Wirat upon the faid fatute of 28 H.8, cap. 15. The Lords of the Councell reterred the confideration of this request to the Chiefe Inflice of England being melent at the Table, and to the Patter of the Role, and Sir Daniel Dun Judge of the Admiralty, to confider of the cafe, and to direct a course of justice therein in. differently. And the faid referees heard the Councell learned both in the Common and Civill lawes on both fides on two feberall dayes in this Terme : and after conference between themselves, and with others, these points were resolwb. First, that at this day there could be no Ambassadour without Letters of moence of his * Soberaigne, to another that had foveraigne authority. Legatus per literas de sua legatione fidem sacere deber, si exigantur, & commonitorium, [Inftructiones privat', for the Amballabour himfelf for his direction.

Secondly, that of ancient time Ambaltadours were called Oracores.

Jamq; Oratores aderantex urbe Latina

Velati ramis olei---

6.

And afterwards they were called Legati à legando, Nuntii à nuntiando, and afterwards Ambaffiatores of Embaffiotores, and fometimes Agents: for Omnis legatus eft agens, but Omnis agens is not legatus : Fog if he be fent from a Bing o absolute Potentate or State to a king or absolute Potentate or State to treat between them, although he in his Letters of Tredence be termed an Agent o Nuncius , yet he is an Ambaffadour of Legate.

Thirdly, it was refolved, that Ambastadours ought to be kept from all injuries mo mongs, and by the law of all Countries, and of all Pations they ought to be fafe and fure in every place, in so much that it is not lawfull to burt the Amhalladours of our enemies : and herewith agreeth the civill law. And if a bant . L.f. F.de Lega. hed man be fent as Ambastadour to the place from whence he is banished, be may not be detained or offended there, and this also agreeth with the Civill law.

The case (which we have seen reported) in the reign of H.8, was this: There being amity between Bing H. 8, and the French Bing, and enmity between H. 8. and the Pope', * R. Pole a Rebell and Traitor to the Bing of England . See the third apeth to Rome, whom the Bope being in amity with the French King fendeth pare of the Inftias Amballabour to him: the King of England Demandeth his rebell of the French Bing, notwithstanding he was fent as Ambasadour, Sed non pravaluit. And it Overfast pa.14. istruly faid, whosoeber faid it, Quia veritas à quocunque dicitur à Deo est, Fuit Tempore H.6. semper eriam apud Gentiles (qui nullam tenebant verz fidei rationem) inviolas bile nomen Nuncii & Legati, etiamfi ab hostibus mitterentur semper salvi, & hodie apud Saracenos & Turcos, à quibuseunque tutæ destinantur legationes & litera, etiamfi illis ad quos deferantur molettæ fint & injuriofa. But if a fozeln Ambassabour being Prorex committeth here any crime, which is contra jus gentium, as Treason, Felony, Adultery, or any other crime which is against the law of Pations, he lofeth the priviledge and dignity of an Ambaffadour as unworthy of so high a place, and may be punished here as any other private Alien, and not to be remanded to his Soveraigne but of curtefie. And to of contracts that be good jure gentium he must answer here. But if any thing be malum prohibitum by any Act of Parliament, private law or Cultome of this Realme, which is not malum in fe jure gentium, not contra jus gentium, an Ambaffabour reliding here thall not be bound by any of them: but otherwife it is of the Subjects of either kingdome, ac.

Paich. 36 Eliz. Henry de Vale and other Frenchmen imported divers manufa. paich. 36. in dures, as Cloth of Tillue, Cawles, Points, tr. Whereupon Tomlinson and Scace.

. Nulli nifi abfoluti principes & qui majeffatis jura habent, Legatos constituere poslunt. Virgil, Idem 11 Aneid. Legati responsa se. Idem 12 Aneid. Nuntius bac Idmon Phrygio mea dilla tyraz no Haud placitura refer -

In aut' de san-&iff. 6 Rerum

tutes, cap. High

Of Ambassadours, Leagues, &c. Cap. 26.

10 H.7.(2p.21.

other good Operchants of London exhibited divers informations upon the flatute of 19 H.7. which prohibit the same; of whom the Frenchmen complained at the Councell Table, and it was refolved by the Lord Treasurer Burghleigh and the iphole Councell, that it was no breach of the League between this kingdom and France, for that in the Articles of the League the lawes of either kingdome be ercepted : and therefore if Tomlinson the Subject being a French Werchant Should trade into France, be must observe the laws and customes of France.

Fourthly, it was refolbed, that admit the faid Palache was no Ambassabour: notivithstanding because there was enmity between the King of Spain and the King of Dozocco, be could not be indicted as a Pirat before Commissioners won the fair fratute of 28 H.8. Because that one enemy cannot be a felon for taking of the goods of another enemy. And the woods of the faid Act be, That the Com. missioners by force of the said Act thall proceed, as if the offence had been commit-

See 2 R.3. by all the Justices, that this is no felony, which case is in his parts

remembred hersafter. For it is very observable what the law of England is in that case. It was holden by some of the Civilians, that albeit the Spaniarh could not proceed against him criminaliter, upon the faid Act of 28 H.8. pet the goods being in folo amici, that is, in the foile of the Bing of England, who was in

ted upon the land, and according to the course of the Common law.

2 R.3.fo.2.

Trin.2. Jac.coram rege.

league with both, that the Spaniard might proceed against Palache, civilizer in the Admirall Court: but that was refolved to the contrary by Popham Chiefe Justice, and the whole Court of the Lings Bench Trin. 2 Jac. to be against the law of England in that case: where the case was this, That where the Bing of England was in league with the King of Spain, and with those of Holland, tc. and there was enmity between the King of Spain and those of Bolland, sc. and one of Holland upon the high fea in aperto pralio took the goods of a subject of Spain, and brought them into England, infra corpus comitatus, and for that the goods were in folo amici, the Spaniard whole goods were taken libelled for them civilizer in the Admirall Court. It was refolbed by the whole Court of the Kings Bench upon conference and deliberation, that the Spaniard had loft the

to; by that book, he that will fue to have rectitution of goods robbed at fea, ought by law to prove two things. First, that the Soveraigne of the plaintife was at the time of the taking in amity with the King of England. Secondly, that he that took the goods was at the time of the taking in amity with the Soveraigns of him whole goods were taken : for if he which took them was in enmity with the Soveraigne of him whose goods were taken, then was it no depredation or robbery, but a lawfull taking, as every enemy might take of another: all which appeareth in the fair book. See the statutes of 27 E.3. and 31 H.6. well expouns

ded in 2 R.3. ubi supra. Vide 7 E.4. 14. 13 E.4.9. 22 E.3 fo.23. concerning this

property of the goods for ever, and had no remedy for them in England. And relyed principally upon the book in 2 R.3. ubi fupra, being of fo great authority:

cap.17. matter. And for that there was enmity between the Bing of Spain and those of 31 H.6 cap.4. Holland, therefore it could not be depredation, but a lawfull taking. It was als 7 E.4.fo.14. fo resolved by the Court of the Kings Bench, that the goods so taken being with 13 E.4.9. in this R calm, viz, infra corpus comitatus, in folo amici, that if the Spaniard 12 E.3.16,17. Regift.129. fue for them civilizer in the Court of the Admiralty, that a Prohibition should F.N.B.114. be granted, and that it hould be determined by the Laws and Statutes of Eng-Prohibition,

27 E.3.ca.13.&

land, and not by the Civill law. With this resolution of the Kings Bench Doctor Taylor an Englishman, and Solicitor for the King of Spain, was at the first much offended, but when he had taken advice and understood the reason of the resolution, he was well sas

Lib. 5.fo. 106.

Nota.

If a thip wack be on the fea, pet if any of the goods come to land within this Realm, the Admirall chall not have jurification, but it belongeth to the Common

See the third part of the Inflitutes, cap. Treason : what offence it hath been, and what it is at this day to kill a forem Ambassadour: and see there 3 R. 2.

John

John Imperials cafe, Andraffabour of Benos. It appeareth in the Holp His 1 Chro.19 2 &c. gopp, viz. in the First book of the Eponicles, that injury and differences offered to Bing Davids Ambasanours which he fent to Hanon Bing of the sponbites. Ad confoland' ei supra morcem patris sui, grandem etiam contumeliam suffinnerunt, &cc. was a just cause of warre by David against the spoabites, and was severely revenged, as by the Holy History it appeareth.

There be four kindes of leagues. I. Fordus pacis, and that a Thriftian Prince Rom. 12. 18. may have with an Infidell. Si fieri poffit, quod ex vobis ch,cum omnibus homi- Gen.14 13 80. nibus pacem habearis. 2. Fordus congratulationis five confolationis, And this Abrah. cum rege may a Christian Prince make with an Infidell as David did with Hanon : pbi inpra. 3. Fædus commutationis mercium five commercii. And this also may be made with an Infidell, as Bing Solomon bid with Hiram an Infidelland Jofus Cap o. Did with the Gibionites, 4, Fordus mouni auxilii, and this cannot be bone with 3 Kings 5.1.8c. an Infibell of an Idolater. Jeholaphar Bing of Juda, made fordus mutui auxilii & 34.35. with Achab Iking of Mrael, an Ibolater: For Achab laid to Jehofaphar, Veni merum in Ramoth Gilead. Cui ille responder, Ut ego & tu, & ficut populai tuus, Sce 1 Mac. 8. 19. fic & populus mens tecum crimus in bello : in which warre Achab was flater, and 10. & cap. 10. Icholaphat was in ertreame banger, And after, as the Mert faith, Reverfus eft 2 Chron. 19.2. anem Jehosaphat rex Jude in domnim suam pacifice in Jerusalem, cui occurrit * Jehn filius Hanani , & ait ad illum, Impio prebes auxilium, & hiis qui oderunt * The Prophet Dominum amicitia jungerie, & ideireo iram quidem Domini merebaris. And the of God. lains of England concerning thele four leagues are as pou perceive grounded upon the law of Bod.

But here arileth a question, that feeing fordus pacis, or fordus commercii map be fricken between a Chriftian Prince and an Infibell Bagan & Ibolater, and thefe leagues are to be established by oath whether the Infibel or Pagan Prince map Iwear in that case by falle gods, feeing he therebpoffenbeth the true Bod by gibing divine worthip to falle gods. This very doubt was moved by Publicola Aug. Epift. 154. to &. Augustine, who refolbeth the same thus : he that taketh the credit of him ad Publicolam, that sweareth by false gods not to any evill but good, he both not joyn himselfe to that finne of finearing by Debils, but is partaker with those lawfull leadnes wherein the other keepeth his faith and oath. But if a Chaikian Chould amp inap induce another to fweare by them, herein he thould grievoully fin. And feeing the leagues in these cases are warranted by the word of God, & per praxin fanctorum in facra feripeum, all incidents thereunto are permitted: for per praxin fantorum the practife of boly men in fertptuce, may often time be colleded boto Praxis fanctorum the Commandements in it are to be underftood, and praxis fanctorum appeareth interpres pracepbefore.

And it is to be observed that of ancient time, and until latter dayes no Amballador came into this Realm before be had a late conduct. For as no bing to. can come into this Realm without a licence of fate conduct to no Prorex, ac. which representeth a Bings person can boe it. For fate conducts fee the write in the Register de falvo conductu, and the statutes of 15 H. 6. 18 H. 6. and 20 H. 6. with all incidents thereunto. And King H.7. that wife and politique King would not in all his time fuffer Lieger Ambastados of any fosaine King of Prince within his Mealm, no; be any with them , but upon occasion used Am. 18 H.6. cap. 8. baffadoza.

* Chery Amballado; ought to have four qualities, erwooled in this Werle. Nuncie, sis verax, tacitus, celer, atque fidelis.

And of him another faith.

Fæderis orator, paeis via, terminus ira, Semen amicitiz, belli fuga, litibus hostis.

VVilliam de la Pole Duke of Souff. by the Commons was charged (amongst Ror. Pl. 28. H. 6. other things) with this, that be procured the king, in his presence only with nu. 28. out any other of the Councell, to have fecret conference with the French Am: balladors, ec. for the which (amongst other things) he was banished, ec, as by the Record appeareth.

Sodom.

2 Chron 18. Jeremy 15.4. & cap. 20.35.&c.

August lib.de mendacio.cap.15. torum.

Rot. Parl. o H.6. nu. 12. and long after. See lib 7. Calvins case, De rege Regift.fo. 25,26. 15 H 6.cap.3. 20 H.6.cap.t. 1 H.7.fo.10. Le gate of the Pope worne.&c. Foure qualities ought to be in an Ambaffadour.

Cardinall

1 Decemb.

See these Articles before in hee verba, Cap.Chácery, Artic. 2, 3. 9,10.12. Cardinall VVolley was charged with these notable high and grievous offences (among to there) viz. That he being the kings Amballador in France made a treaty with the French king so, the Pope, the king not knowing any part thereof nor named in the same, and binding the French king to abide his order and award, if any controverse or doubt hould arise betingen the said Pope, and the said French king.

Also that the said Lord Cardinall being the Lings Ambassador in France sent a Commission to Sir Gregory de Cassalis under the Great Seal in the Lings name to conclude a treaty of amity with the Duke of Ferrare without the Lings commandement or warrant, nor the Ling advertised nor made privy to

the fame

Also the said Lord Cardinall taking upon him otherwise then a true Prive Counsellor ought to doe, have used to have all Ambasadors to come first to him

alone, and to hear their charges and intents, sc.

Also the said Lord Cardinall used many years together not only to write to all the Kings Ambassadors in sozain parts with other Princes in his own name all advertisements concerning the Kings assairs being in their charge, and in the same letters wrote many things of his own mind without the kings pleasure known, concealing divers things which had been necessary for them to know, but also caused them to write their advertisements to him, and of the same letters be used to conceal for the compassing of his purpose, many things both from the Kings Councell and the King himself.

The difference between a League and a Truce is, that a Truce is a cellation from warre for a certain time: a League is an absolute striking of peace.

a Df a Truce we have read in anno 19 E.3. to this effect. Rex post initas inducias cum Francorum Rege per mediationem b Romani pontificis, copias sus bellicas demum reduxit, postea deprehendens præfat' regem Franc' hostilia contra ipsom moliri. & nuntios præfati Pontificis simulata pace dissidium sovere, præmissa omnia per Literas Patentes exponenda duxit, & bellum cum præfatorege resumpsit.

A League and alliance was made between King H. 5. his heirs and fucces loss, and Sigismond King of the Romans his heirs and successors Kings of the Romans, and was confirmed by Act of Parliament. The instrument whereas

ts bery long, but not folong as effectuall and worthy of observation.

d It is faid in 9 E.4. that a League made between two Kings (without naming of fuccesses) both not extend to successes, although by our law Rexponintermortiur.

Dope, but there may be many presidents to the contrary, for besides his spiritual jurisdiction he is a Temporall Prince, whereoffee a president among many others, Rot. Pat. 35 E.3. parce 2. memb. 24. and likewise the Pope sent Ambasadors into England, who were sworn not to attempt any thing prejudicial to

the King or Kingdome.

and that we may give some tasse of every kind: In times pass the king of England sent Ambassadors to generall Councels, as taking one example of that soft sor many. Ad concilium Basileens' sub Eugenio Papa, quorum destinati sunt per regem Ambassadores & Oratores Episcopi 'Robertus London', Philippus Exoniens', Johannes Rossens', Johannes Baiocens' & Bernardus Aquarens' Edus comes Moriton, Abbates Glasson' & beatæ Mariæ Eborum, Prior Norwici, Henricus Bromslet miles, (dominus Vesciæ) Thomas Browne legum Doctor Decanus Sarum, Johannes Collevile miles, & alii. Their authority was in these words. Dantes & damus eis & ipsorum majori parti potestatem & mandatum tam generale quam speciale nomine nostro & pro nobis in eodem concilio interessendi, tractandi, communicandi, & concludendi tam de hiis quæ resormationem Ecclesiæ universalis in capite & in membris, quam in hiis quæ sidei orthodoxæ sulcimentum, regumque ac principum pacificationem concernere poterunt, nec non de & super pace perpetua, guerrarumve abstinentia inter nos & Carolum

& A Truce. Rot. Franc' 19 E.3.m.10. part I . b See the truce at large, Lib. Par. fo.5. c A League. Rot.Par.4 H.5. nu.14. d 9 E.4.2.2. e 39 H.6.39. f Ro. Pat. 35 E. 5. part.2.m.24. Clauf. 10 H.4. m.1 c.nuntius pape. Rot. Clauf. 14 H.3.m.i. Rot.Clauf. 12 R.2.m. Dorf. g Ro. Pat. 17 R.z. Part. 1.m.23. Rot. Franc. 12 H.6.m.2. Rot.Pat. 12 H.6. 12 part. m.6. * Robert Gilbert Doctor of Divi-John Langdon Doctor of Divinity died at this Councell. Nicholaus Abbas Glafton, Willielm. Abbas beate Ma-

rie Eborum.

The letters of the

Pope whereby generall Councels

are called, you

may read in Mat.

Par. Anno dom-

1245.pa.886.

Carolumadversarium nostrum de Francia, ac etiam tractandi, communicandi, & appunctuandi, consentiendi insuper, & si opus fuerir, dissentiendi hiis quæ juxta deliberationem dicti concilii inibi statui, & ordinari contigerit, Promittentes & promittimus bona fide nos ratum, gratum, & firmum perpetuo habiturum totum & quiequid per dictos Ambassiatores, Oratores, & Procuratores nostros, aut majorem partem eorundem actum, factum, seu gestum fuerit in præmissis,& in singulis pramisforum, & hoc idem cum de & super hiis certiorati fuerimus quantum ad nos & Christianum principem attinet, executioni debitz curabimus demandat'. In cujus rei testimonium has literas nostras fieri fecimus patentes. Dat' sub magni sigilli nostri testimonio in Palatio nostro Westm' 1 o die Juili,

The have expressed this Ambassage the more particularly, for that, to this Rot. Pat. anno Countellallo I find that Henry Beauford (fon of John of Gaunt by Katherin 11 H.6.pute 1. Swinford) Bithop of Minchefter and Cardinall of S. Cufebpe addressed himself m.10 & 12. & and had licence to transport and carry with him 20000.1. of gold and filter (mute, m.13. but moving Amballadors) notivithstanding the statutes of 9 E. 3. cap. 1. and 5R.2. cap.2.&c. For the form of a late conduct (which is called de falvo conandu) fee the Register. And for the effect and validity thereof, fee the statutes

of 15 H. 6. cap. 3. 18 H. 6, cap. 4. 20 H. 6. cap. 1.

Recordum & process' contra Petrum de Rival Thesaurarium & Camerarium toins Anglia & Hibernia, & custed' omnium Forestarum & omnium Pormun maris,&c. de compoto regi reddito de officiis prædictis & de judicio contra iplum reddito per defaltam, quia venire reculavit, nili falvo regis conductu, quod rex denegavit quali infolitum & indebitum.

What reward Legats have had in former times you may read, Roc. Liberar. 11 H.3. m.13. Rot. Clauf. 11 H. 3. m.11. in Dorf. Rot. Liberat. 3 E. 1, m. 9.

Fodem Rot. 1 E.1.m.2. Rot. Alman. 11 E.3. per totum Rotulum.

See Beda in his Hittory of England, Lib. 1. cap. 11. hereafter Cap. 75. Of Stockand, in fine, the danger of unwife and incertain Leagues.

Keg, fo. 25, 26.

CAP.

CAP. XXVII.

The Court of the Iustices of Assis, and Nisi Prius.

Glanvil lib.13. cap.32,33.&c. Bract.lib. 4.fo. 164.b. Brittonfc. 106.b. 112.118. Fleta li.4.cap.1. & 5. Mirror ca.2. §.15. Stat.Walliæ in Vet.Mag.Car. 2 part.fo. 12. 26 Aff.p. 24. *FN.B. 177. Reg. See the 1 part of the Inft. Sect. Mag. Car.ca.30. 39 H.6.19.b. mord. When Justices of Affife by Patent first began. The Patent of the Justice of Affife. a Juflic' nostros ad Affifas. Hereunto belong Commissions of affociat', writs of admittance, and of fi non omnes, Gc. F.N.B.177. Register, and a writ to the Sherif to bring before them omnia brevia Affis' Jurat' & Certifical, coc. b Jurat' when the recognitors are turned in jurata. 19 E.z. All 418. 29 Aff.p.78.&c. c Certificat, hereof you may read in F.N.B. and the Register. d Nota.

e W.z.ca.25. f W.z.ca.30. Vid.4 E-3.cap.2.

g Ro.Par. 21 E.1.

Rot.3.De Justi-

ciariis affignatis.

Problem the write of Allife, whereof the Intities take their name; in all ancient Authors, it is called Assis a novæ disseisinæ, or Petir briefde novel disseisin. De which write Brackon saith, Recognitio Assis novæ disseisinæ multis vigiliis excogitata & inventa suit recuperandæ possessionis gratia, ut per summariam cognitionem absque magna juris solennitate, quasi per compendium, negotium terminetur. And the Mirror saith, that sor expedition of sustice, and outsing of delayes, it was ordained by Ranulph de Glanvill; but I find the sait more ancient, as it appeares in 26 ass. pl. 24.

witt more ancient, as it appeareth in 26 aff. pl.24.
At the Common law Affices were not taken but either in Bank, or before Justices in Gire, and this was a great delay to the Plaintif, and a great moleftation and beration of the recognitors of the Affile. For remedy whereof, it is enacted by the statute of Magna Carra, Quod recognitiones de nova disfeifin, & demorte antecessoris non capiantur nisi in suis propriis comitatibus, & hoc modo nos si extra regnum suere Capitales Justiciarii nostri, mittent Justiciarios nostros per unumquemque comitatum semel in anno, qui, &c. capiant comitatibus illis Affifas prædictas. By force of this At, thefe three conclutions are to be observed. First, that no Asise can be returnable in the Kings Bench, of Common Bench, unless the disselsin be done in the County where the Benches sit respectively, or if both Benches sit in one County, then the Plaintif bath election to make it returnable in which Bench he will. Secondly, that the Inflices of both Benches in that case have jurisdiction oxiginally and oxdinary without any Patent. Thirdly, that upon the faid Act of Magna Carca Letters Batents to Justices of Actile were framed for the taking of Actiles in the proper Counties in these words.

† Rex,&c.dilectis & fidelibus suis R. M. uni Justie' suorum de Banco,& I.L. uni Justie' suorum ad placita coram nobis tenend' assign' Salutem. Sciatis quod constituimus vos Justiciarios nostros una cum hiis quos vobis associaverimus, ad ommnes a Assis, b Jurat', certificat' coram quibuscunque Justie' tam per diversa brevia domini Johannis nuper regis Angliæ patris nostri, quam per diversa brevia nostra in Com' nostris Southt' Wiltes, Dors. Somerset' Devon' & Cornub' ae in civitate Exon' arranian' capiend'. Et ideo vobis mandamus, quod ad certos dies & loca quos vos ad hoc provideritis, Assis', Jurat', & certificationes illas eapiatis; d Facturi inde quod ad justitiam pertinet secundum legem, & consuetudinem regni nostri Angliæ. Salvis nobis amerciamentis inde provenien'. Mandavimus enim Vicecomitibus nostris com' & civitat' prædict', quod ad certos dies & loca quos eis seire faciatis Assis', Jurat' & certificat' illas una cum brevibus origin' & oranibus aliis ea tangen' coram vobis venire fac'. In cujus rei testimonium, &c.

c By this wit the seisin and possession was recovered, and became most frequent, quia non est aliad breve in Cancellaria, per quod querentes habent tam festinum remedium, quam per Assisam. And after the statute of W.2. was made, and thereby it was probided, quod assignment duo Justiciarii juraticoram quibus. 80 non aliis, capiantur Assis, &c. ad pluster per annum,

s Dominus rex,&c. przeepit, quod de cztero assignentur OAo Justiciarii circumspecti & discreti ad Assisas, Iurat', & certificat' capiend' per totum regnu Angliz, viz. and bivideth the Realm into eight parts, and to every part assigneth two Justices.

b 17 E.I. Stat.de

To deliver Gauls.

d Stat. de Appel-

Finibuscap 3.

6 22 E.4. 19.

But divers Ads of Parliament have given unto Buftices of Affile authori-

ty in many cafes.

b Per lestatur' de finibus ca.3. Justiciarii ad Affisas capiendas affignati deliberent Gaolas in com' illis tam infra libertates quam extra de prisonariis quibuscunque. Appeals of murber, robbery and rape may be commenced before Bultices of Affile. d Power given to Justices of Affile to try the appeals of Approvers. · Justiciarii ad Assisas capiend'assignati non compellant Juratores dicere præise.

Justices of Allife hall enquire for non-returning, and falle returns of She-

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s Justices of Affile may hear and determine of Conspirators, falle Informers, and wicked procurers of dozens, Enquetes and Juries at the complaint of any without writ, and without delay, and of confederacies and champerties and maintainers, bearers, and alliances by bond, tc. h Df defaults of Sherifs, Of. theators, Bailifs, and other Dfficers.

Juffices of Allife may enquire of defaults, ac. of punishment of Atauallers,

K. which fell at unreasonable prices.

k They have power to hear and determine riding and going armed, tc. and to with Intices of Peace, Sherifs, Baillies, and others for not boing their

office in that case.

They may hear and defermine treason in counterfaiting of money, ec. They shall do execution of the statute of 13 H.4. of riots done in their presence mon pain of an hundred pound. " And by the statute of 2 H. 5. Commissions hall be awarded to enquire of the default of Justices of Asife, and of Justices of Peace in that behalf.

They thall enquire of, hear, and betermine all offences contrary to the ffainte of 23 H, 6. concerning Sherits, Ander-therits, and their Clerks, Cozoners, bewards of Franchifes, Bailits, and keepers of prisons for ertortion, and for bitting to bail fuch as were not bailable, or for denying of bail to them that

ought to be bailed, ac.

P Justices of Affice thall take bail of him that is acquited of murder with P3 H.7.cap.1. in the year to answer to the appeal of the party, 5 Eliz, cap. 5. Of Informers. Eliz. cap. 4. Of Labourers.

9 Juffices of Affife, of Gaol-Delivery, and of the Peace, thall enquire of the q 1 H.3.8 ca 7.

default of Cozoners.

· Juftices of Alife, tc. Mall enquire of falle making of Leather. f Df amending of high- wags. Df hunters in Barks. "Df unlawfull taking of Filbes. " El-cap. 5. Df forgery of falle deeds. y Against deceipt in Linnen-cloth, 2 Against per: 25 El.cap. jurg: * Df ulury and many other things.

* Justices of Assile twice in the year ought to proclaim the statute of 32 H.8, and other fratutes against unlawfull maintenance, champerty, imbracery, and unlawfull retepners. b They ought to proclaim the statute of unlawfull games 633 H.8.ca.9.

in their circuit. See the Cultumer of Posmandy, cap. 19.

Aow concerning Justices of Nisi prius, they were first instituted by the statute of W.2. of illues joyned in the Common Bench, and Kings Bench: and their authority is annexed to the Autices of Affile, and is by force of a fudicial tion of this Aa. wit, and therefore we have joyned them under one title. And this appeareth in vid. Fleta 1.4.c.s. the judiciall wait of Nifi prius, which is.

thority of Justices of Nisi prius, in libro meo.fo. 54 b.the Pl. begun, Et auxine en Nis prins grant devant Stonf.

Rex vicecomiti Salutem. Pracipimus tibi quod venire fac' coram Ju- The writ of sticiariis nostris apud Westm' in Octab. Sancti Michaelis, vel coram Justi- Nisiprim. ciariis nostris ad Asisas in com' tuo per formam statuti nostri inde provis' capiend' assignatis, si prius die lune prox' ante festum, &c. apud, &c. venerint 12, tam milites quam alios, &c.

And by the laid An the Juftices of Nisi prius have power to give judgment W.z.ca.30. in Affile of Darrein Presentment and Quare Impedit.

latis, an. 28 E 1, e W.2.cap.30. f W.2.cap.39. 2 E.3.cap. 5. g Artic. Sup. Car. 28 E.1.4 E.3. C.11.7 R.2.C 15. Regift. 186.188. 4 E.3. ca.12. Of Majors and Baylifs, que ne serche wines. b 20 E.z.ca 6. i 23 E.3.cap.6. ₹ 2 E.3.ca 3.de Northampton. 1R.2. CA7. OF unlawfull maintenance. 13 H.g.ca.7. m 13 H.4.cap.7. n 2 H. s.cap.8. 0 23 H.6.ca. 10. 33 H.8.ca.9.tor

r 18 El.cap.g. s 18 El.cap. 10. 1 5 El.cap. 3. y1 El. ca.14.

₹ 5 El ca.g. 432 H.8 ca.

c W.2.c 30. See the 2 part of the Inft. the exposi-Vid.Hil.32 E.3. m.s. fee the au-

6 E.6.Dier 77. 15p

160

Justices of Assife and Nisi prius. Cap. 27.

7 R.z.ca.7.

By the flatute of 7 R. 2. Nisi prius thall be granted as well in the Exche.

quer as elsewhere.

9 El. Dier 261.

18 El.ca. 12.

Of illus forned in the Lings Bench, Common Bench, and Efchequer, the Chief Butices, og Chief Baron , og in their absences two other Buffices 0) Barons of the fato feverall Courts, as Justices of Nifi prius for the County of Midd. within the Terme, or four days after thall feberally try, et, and that Commissions, and watts of Nifi prius thall be awarded, tc. It is to be the ferbed that there is but a transcript of the Record fent to the Justices of Nic

27 E.t.de finibus. F.N.B.241.e. Statut, de York. 12 E.z.ca.3.& 4. 2 E.3.ca. 16. & 4 E.3.cap.2. 14 E.3.ca.16.

By the fatute of 27 E.1. de Finibus ca.4. It is provided, Quod inquifitiones & recognitiones capiantur tempore vacationis coram aliquo Justiciario deutroque Banco, coram quibus placitum deductum fuerit. See the fratutes of Doth, 2 E 3.cap. 16. 4 E.3. ca.3. and the flatute of 14 E. 3. cap. 16, which flatute both provide that Nifi prius may be taken in every plea reall and personall before two, To that one be Buttice of one of the Benches , or the Chief Baron or Berjeant fworn, without any regard where the plea depended, and this frambeth yet at this Dap. Vid. 42 E. 3. cap. 11, 19 H. 6. fol. 47, 33 H. 6. fol. 14. 16 H. 7. fol. 14. 5 Maria Dier fol. 163.

Ror, Clauf. 10 E.z.m.10.

F.N.B.240,c.

of felony and

a 24 E.3.f. 23.

Rot. Par. 37 E.3.

nu. 18.F.N.B.

6 10 E.4.fr. 14. 22 E.4.18.3 Mar.

Dier 120, 121. &

c See the 2 part of

the Inft. upon this Act of W.2.

Nifi prius in cafe

Stanf. 156.

cap.II.

241.3.

131.

cap.12.

Concordatum fuit per totum concilium regis, quod nullus Vicecomes aut Coronator fiat Justiciarius ad Affisas capiend', Gaolas deliberand', transgress' audiend' & terminand', seu ad aliquod aliud officium Justic' faciend', eo quod debent effe incendentes aliis Jufticiariis. Withth Act is Declaratory of the Common law, for that (as by the reason peelded in the Ad it appeareth) these offices be incompatible, the one being attendant unto, and within the controlment of the other.

14 H.G. cap. 1. Justices of Nisi prius have power in all cases of selong and treason to give subgment as well where the prisoner is acquited, as where be is attainted, and to award execution.

a Where the King is a party, a Nifi prius may be granted, if the Kings Attum

treason. 4 E.3. affent unto it.

In Appeal of murder, robbery, and rape brought in the Lings Bench, if the parties be at titue, a Nifi prius may be granted before Justices of Affile, 25 E. 4. 30. 14 E.3. Nili prius 16. 22 E.4.19: 21 H.7. 36. 9 El. Dier 261. 42 E.3. C.11. 8 H. 7.6. b But it is to be observed, that if the Appellee be acquited before Juth ces of Nili prius, they have power to acquit, tc. and give judgement, as is alone faid.

E they may also enquire and judge of the abbettors and dammages by the flatute of W.2.cap.12. and not by the faid Act of 14 H.6. And fo it is if the Appeal be brought before the Austices of Astife, they have also power to enquire and judge, Ut fupra.

These Justices of Nisi prius were instituted for two causes, viz. 1. Proper intolerabilem jacturam Juratorum, & in exonerationem Juratorum. 2. Ad ce-

lerem justitiam in ea parte exhibendam.

Inquifitiones & Jurat' in placito terra capiend' qua magna non funt exami-

nationis, capiantur in patria, &c.

And hereupon a prohibition is grantable to Instices of Asife, Quod non

caperent in patria inquisitiones que magna indigent examinatione.

By the original institution of Justices of Astiles and of Nifi prins, the tryall should be before two at the least, and it were much for the advancement of ju-Rice and right to have the law put in due execution, for plus vident oculi, quam oculus, and specially in Pleas of the Crown concerning the life of man, in regard whereof they shall be worthy of greater allowance.

d 27 E.1.ffa:. de finibus cap.4. Rsgift.186. W.2.cap.30. Regist. 186. 14 E. z.aff. Br. 413. & tit. All.

> Before the Justices of Affife in pays a forain pleasviz. Willenage was pleaded, for tryall whereof the Record was removed into the Common Bench, and there a Venire fac' was awarded, and retorne, servie, and a Habeas corpus with a Nisi prior was prayed. And it was objected that the iffue was not joyned in Bank. no; judgment to be given there, and get in the end the prayer was granted, as

Dier Manuscript. Hil. II Eliz. 26 aff. p.3.

Fitzh.110.

Cap. 27. Justices of Assise and Nisiprius.

in a * Certificate, upon an Alise a Nisi prius shall be granted: a And so it is ups 7 H.4.45.

on a forain Houcher, Receipt shall be granted, and a tryall by a Nisi prius had.

b The Justice of Nisi prius may grant a Tales de circumstantibus, either when but one or more appear of the principall pannell, or where eleven doe appear: and all the Jury may be of the Tales de circumstantibus, as it was upon a Tales at the 3 H.4 18.

Common law.

the party without affent of the Kings Atturny, and so are the books to be intens cop. 1. 14 Elses

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d In Attaint the Plaintif craved a Niss prius, and because one of the Petit Vid.8 Eliz.

Imp was prisoner in Pewgate, and came in ward and pleaded, and was remantable, and it a Niss prius should be granted be should lose his challenges, the Court 18 E.3.58.

beinged to grant any Niss prius, otherwise a Niss prius may be granted in an 14 E.3. Niss prius staint.

f In trespace between the Duke of Ereter and the Lozd' Cromwell 23. 21 H.7.3 the Councell of the Duke moved so a Nisi prius, and so that the Duke was F. N. B. 140. Scanfpl.cor. 1 Prepotent Printe in that Country, and the Venire sac' being returned, there 156.a.b. tass a great rout in the Hall, so as it a Nisi prius thould be granted great miss 44 E.3. so.2.

the might enfine, therefore no Nili prius was granted.

spore you may read of the writs of Affile and of Nish prius in our books that \$\frac{8H}{4.23.21E.3.}\$

which hath been said concerning the jurisdiction may suffice. It is commonly \$c.15E.3.Nish

miled a writ of Nish prius, but the words of the writ are Si prius &c. And als prius. 22 simile. Left the authority of Austices of Affile (as it hath appeared) bath by Act of Par.

liament been exceedingly enlarged both in dignity and multitude of causes, yet \$f.2 \text{H.6.9.}\$

they retain their first and originall name, albeit Affiles are in these days very \$22 E.3.16.F.N.B.

tarely taken before them. See in the Chapter of Austices of Peace powers and \$215.\$

withouttes lately granted to Austices of Austice, and Austices of Nish prius.

CAP. XXVIII.

Justices of Oier & Terminer.

We authority of Justices of Oier and Terminer is by Commission, De Commissions of Oier & Terminer there be two losts, one generall, to called because it is generall, in respect of the persons, the offences, and the Commissions, see places where the offences are committed, the which Commission followeth in thefe words. 2 R. 1 Cor. 47. Pl.com 390. Countee de Leic' Elizabeth dei gratia Anglia, Francia, & Hibernia Regina, fidei de-

fenfor &c. Charifimis confanguineis suis Willielmo Marchioni Winton

Henrico Comiti Southt', &c. ac dilectis & fidelibus suis Rogero Manwood uni Justic' suorum de Banco, Iohanni Jefferay uni Iustic' ad placita coram nobis tenend' aßign', Iohanni Arundell militi, &c. Iohanni S. Iohn Humf, Walrond, William Pool, Petro Edgecombe, Thoma Morton, &c. Salutem, Sciatis quod asignavimus vos & tres vestrum, quorum aliquem vestrum

vos prafat' Rogerum Manwood & Iohannem Iefferay unum effe volumu

Hereupon they are called | ufticrs of Oier and Terminer.

For generall

42 Aff.pl.s.

cafe.

Iusticiarios nostros ad inquirendum per sacramentum proborum & legalium hominum de com' nostris Southt. Wiltef. Dorset, Somerset, Devon. & Cornub. & corum quolibet, ac aliis viis, modis, & mediis quibus melius sciveritis, aut poteritis tam infra libertates quam extra, per quos rei veritas melius sciri poterit de quibuscunque proditionibus, misprisionibus proditionum, insurrectionibus, rebellionibus, murdris, feloniis, homicidiis, interfectionibus, burglariis, raptibus mulierum, congregationibus & conventiculis illicitis, verborum prolationibus, coadiutationibus, misprisionibus, confæderationibus, falsis allegantiis, transgressionibus, riotis, routis, retentionibus, escapiis, contemptibus, falsitatibus, negligentiis, concelamentis, manutenentiis, oppressionibus, cambipartiis, deceptionibus, & * aliis malefactis, offensis, & injuriis quibuscunque, nec non accessar' eorundem infra com' pradict' & eorum quemlibet , tam infra libertates, quamextra per quoscunque & qualitercunque habit', fact', perpetrat' sive commis. Et per quos vel per quem, cui vel quibus, quando, qualiter, & quomodo, ac de aliis articulis & circumstantiis pramis. & corum aliquod vel aliqua qualitercunque concernen. Et ad easdem proditiones & alia pramissa (hac vice) audiend. & terminand. secundum legem & consuetudinem regni noseri Anglia. Et ideo vobis mandamus quod ad certos dies & loca quos vos, vel tres vestrum, quorum aliquem vestrum ex vobis prafat. Rogerum Manwood & Iohannem Iefferay unumeffe volumus, ad hoc provideritis diligenter super pramisis faciatis inquisitiones, & pramisa omnia & singula audiatis & terminetis, ac ea faciatis & expleatis in forma predicta, facturi inde quod ad Institiam pertinet secundum legem & consuctudinem regni nostri Anglia. Salvis nobis amerciamentis & aliis ad nos inde spectantibus. Mandavimus enim Vicecomitibus nostris com. pradict. quod

ad certos dies & loca, quos vos vel tres vestrum, quorum aliquem vestrum ex vobis prafat. Rogerum Manwood & Iohannem lefferay unum ese volumus, eis scire feceritis venire fac coram vobis, vel tribus vestrum, quorum

generall words.

Nota, thefe

* Nota.

Cap. 28. Iustices of Oier and Terminer.

aliquem vestrum vobis prafat' Rogerum Manwood & Iohannem Iefferay unum ese volumus, tot & tales probos & legales homines de ballivis suis tam infra libertates, quam extra per quos rei veritas melius (ciri poterit & inquiri. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipsa apud Westm' 27 die Iunii Anno regni nostri decimo octavo.

2 Barticular Committions of Dier and Terminer fo called in refrect of the sections of the offences, or of the places, whereof you thall finde five prefidents in the Register: * 1. Against the Bithop of Wainchester and his Pinisters. 2. De nave fracta, if the goods ought to be taken for Wateck. 3. Di dibers oppreffions, ec ertortions, ac. by the kings Ministers. 4. Df Dier and Terminer for the Dio of Daventry. And 5. For the laing in time of bacation, which you may

. Concerning Committions of Dier and Terminer Ten Conclutions are to be abferbed. 1. That Diers and Terminers thall not be granted, but before the Inflices of the one Bench or the other, or the Juffices errant, and that for great about the trespalles, of the Kings especial grace, according to the fratute in the

time of his b Brandfather.

and in the Register there is a Supersedeas, Quia non enormis transgressio, which wood [enormis] is in the flatute of W.2. ubi fup. d To Commissioners of Dier and Merminer a Wirit of Superfedeas was delibered, Quia enormis transgrefio non eft, ideo supersedeant, for it was not but for cutting bown of Arces. And afterward a Wirit of Procedendo under the Great Seal of later date was belivered to them to proceed fecundum legem & confuerudinem Angliz non obfance aliquo mandato, &c. by bertue whereof, notwithstanding the former Writ, they did proceed by abotice of all the Justices. For a Warit of Superfedeas is one thing, and an absolute repeale og countermand of the Committion it felfe is another. A Superfedeas is but to ftay, or torbear the proceedings, * that is, fuper advisamentum sedere, and is not mes un surcesse de advisement. And such map the cutting boton of trees be, as it may be enormis transgressio, and there: fore notwithstanding a Supersedeas the cause map proceed by a West of Procedendo. But after an absolute repeale or countermand by the King of the Com: million it felf, the Commillioners cannot proceed after by force of any Procedendo, but there mult be a new Commission.

The fecond Conclusion is, that Commissions are like to the Kings Writs, fuch are to be allowed which have warrant of law and continual allowance incourts of Justice. Foz all Commissions of new invention are against law untill they have allowance by Act of Parliament, f Committions of novell inquiries are beclared to be boides Commillions to allap Weights and Meafures (being of mely invention) are declared to be boid, that fuch Commissions, should, not be after granted. So as a Commillion is a Delegation by warrant of an Ad of Parliament, or of the Common law, whereby jurifolition, power, or authority to conferred to others. Sapiencis Judicis of cogicare carryin fibi effe permifconferred to others. Sapientis Iudicis est cogitare tantum fibi esse permisfam, quantum commissum & creditum. And it is a good rule for all Commissio. ners to hold the like, and ever to keep themselves within their Commission,

The Commons do petition, that certaine Commissions lately fent to Cities Ror, Par, a H.4 to; the making of certaine Boats and Bullingers being done without allent of nu.23. Parliament, might be repealed. The king both answer, That after conference with the Lords, reasonable answer should be made. And that these Commissions took no effect, appeareth in this, That no further complaint was thereof made,

and no fuch Commission was ever after granted.

At the petition of the Commons, the King granted that one Benner Wilman, who was imprisoned to answer before the Constable and Parshall of England, fould be tried according to the common laws of this Realm, notwithstanding amp Commission to the contrary. And thereupon a Wirit was accordingly dire: Vid.42 Aff.p. 5. and to the Justices of the Bings Bench, as there it appeareth. Of these kindes

* Regift.125.126 F.N.B. 110.111. For particular commissions fee 42 Aff.pl. 12. 34 Att.p.8. 19 E.3.30.31. Rot. Clauf. 18 H.3.m.19. de Petro de Rivall. 4 2 E.3.cap.2. 34 E-3.cap-1. To be named by the Court & not the party. See the flatute of 42 E.3. ca .4. which extends to Enquiries. 4 H 4 cap 9. Vide Rot, Parl. 50 E.3. nu. 51. for Committions of inquiry what persons ought to be named: so note a diverfity between Commissions of Enquiry, and of Oier and Terminer. b W. 2. 13 E.1. cap. 29. c Regiff. 114, 125.2 E.3.cap.2. d 12 Aff.p.21. Vide Br.com. 12. & Oier & Ter miner. 4. c Regift.114 125 * Superled u ide. f 18 E.3.cap.1. g 18 E.3. cap.4.

Rot. Parl. 5 H.4.

Justices of Oier and Terminer. Cap. 28.

many more authorities might be cited, but let us return to our Juftices of Dier and Terminer.

41 Aff. 7.12. Vi. F.N.B. 110.b Regist. 125.&c. In the reign of E. 3. the Instices were so carefull, that no innovation should creep in concerning Commissions of Dier and Terminer, that certain Instices having their authority by Writ, where they ought to have had it by Commission, though it were of the some and words that the legal Commission ought to be, Iohn Knivert Thief Instice by the advice of all the Indges resolved, that the said Writ was contra legem. And where divers Indiaments were before themsound against T. S. the same, and all that was done by colour of that Writ was dammed.

The third conclusion is, that Buttices of Dier and Terminer cannot proceed upon any Indiament, but upon Indiaments taken before themselves, for their

The fourth conclusion, that Justices of Dier and Terminer may upon an

authority is, Ad inquirend', audiend', & terminand',

Indiament found proceed the same day against the party indiaco. But against this there seems to be great authority: For in Kelwey so. 159.b. it is thus said. Mem, que en breise de Oier & Terminer. P. 9 H.8. sur le insurrection in Londre il suit determine elerement per touts Justices Dengliterre, que Iustices D'oier & Terminer de puir inquire un jour,& mesme le jour determine, nient pluis que Justices de peace; mes lustices de Gaol delivery & Iustices in Eire poien bient. It may be that he that set down this case took it upon trust, so, it agreeth in essentiolem verbis with the Chronicle in 9 H.8. so. 843. and it is erroneous in divers main points. 1. That the Dier and Terminer was by Warit, where it was and ought to be by Commission, as hath been said. 2. That Bustices of Dier and

out question they may do : for proof whereof we will cite some sew Records in Read of many.

Thomas Marks Bithop of Carlille before Commissioners of Dier and Ter, miner was indicted, fried, and adjudged all in one day, for High treason.

Terminer cannot enquire one day, and determine in the same day, which with

Die Luna post sestum Sancti Michaelis, Anno 1 H. 8. before Fisher, Brudnell, Palmes, &c. Commissioners of Dier and Terminer, Sir Richard Empson was indicted of High Treason and tried all in one day. And we desirous to see the entry, upon not guilty pleaded, it is thus: Ideo inter dict dominum regem dict Rich. Empson militem in instant diem ad horam primam post meridiem, &c. apud castrum de Northampton venerunt, &c. qui nec, &c. ad recognost, &c. Ad quos quidem diem horam, & castrum de Northampt venit coram prasa Iustic

præd' Rich. Emplon, &c.

2 Dec' Anno 3 E. 6, at Thesen. before Richard Lister, Edward Mountague, Roger Cholmeley, Edmond Merton, William Portman, and Humsrey Browne, and other Commissioners of Dier and Terminer, Robert Bell was indiced of High Treason and tried the same day. 10 Dec' Anno 3 E. 6. before Sir William Portman and other Austices of Dier and Terminer at Reading in the County of Berks Thomas Bonham was indiced of High Treason and tried the same day. 4 Augusti 10 Eliz. Iohn Felton was before Cummissioners of Dier and Terminer in London indiced of High Treason, and tried the same day by the addice of all the Audges of England. And, the award in the Roll by the Institutes of Dier and Terminer to the Sherisse to returne a Jury, is not sufficient; but there ought to be a precept to the Sherisse, under the Seals of the Commissioners so, the returning of a Jury, but otherwise it is in the Lings Bench.

b The third erroz in the faid case of 9 H. 8. that Instices of Peace cannot inquire and try the same day which without question they may, for they are speciall Austices of Dier and Terminer: and wherefore Austices of Dier and Terminer should not try the same day, as well as Austices of Gaole-delivery, and Iu-

Aices in Gire, no found reason can be giben.

and determined before Justices of Dier and Terminer. And so it seemeth to me

3 Mar. Br. Commillions 23.

Vide 29 Aff. 33.

Hil.2 H.4 Rot.4.

1 H.8. Sir Rich. Emplons cale. Northampton.

a And with this confrant experience agreeth 4 H.5. tit. Enqueft 55. b 22 E.4.cor.44. holden for no law. & Vide Lestatut de 5 E. 6. cap. 14. Of Forestallers, Ingroffers, and Regrators. 33 H.8. cap.g.Of unlawfull games. 7 Eliz, Dier 236. See many ftatures wherein Juflices of Oier & Terminer are exprefly named,

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if the Catute appoint the penalty to be recovered in any of the Kings Courts of Record, according to the opinion of Catlyn, Sanders, and Whiddon ; for the Court of Dier and Terminer is the Kings Court of Record.

The firth conclusion is, that the king may make a Commission of Association directed to others to joyn with the justices of Dier and Terminer, and a Writ of Admittance to the Justices of Dier and Terminer to admit the others into their fociety, which Warit is close. There is also a Warit of Si non omnes bire. med to the Austices of Dier and Terminer and to their Associates : the formes of all which you may reade in the Register ubi supra, and in F.N.B. ubi supra. and in all these Commissions and Wirits, the Justices are directed with this Rule, Facturi quod ad justiciam pertinet secundum legem & consucrudinem Angiz, which is a true mark of a lawfull Commission.

The leventh. If the Bullices lit by force of the Commillion, and bo not abs tourne the Commission, it is determined.

The eighth. Justices of Dier and Terminer, of Justices of Peace, cannot 9 H.4. coron. 457 aligne a Cozoner to an Approver; for it is not within the Commission of eis Scanf. pl. co. 143. c The eighth. Justices of Dier and Terminer, or Justices of Peace, cannot ther of them, but Juftices of Baole-belivery map do it.

The ninth. Justices of Dier and Terminer thall fend their Records and 9 1.3 cap. 5. Dioces betermined, and put in execution to the Erchequer at Wich. every year to be pelipered there to the Areafurer and Chamberlains, ac. to keep them in the

Treasurp. The tenth. Bone of these Commissioners, or of Astile, or Baole delibery, or of the Peace, or other of the Kings Commissioners are countermanded by any new Commission, unlesse the new Commission be thewed unto them to so mas mas it is thewed unto; or that it be proclaimed in the County, or that the new Commissioners do sit and keep their Sessions by force of the new Commission, Br. Commiss.6. the former Committion is countermanded,

The statute of 2 & 3 Ph. & M. cap. 18. for Cities or Towns Corporate being no Counties, but it extendeth not to Commissioners of Oier and Terminer,

And a right profitable statute is made concerning this matter, viz. That 1 E.S.ca.7. no Proces or fait before any Justices of Affise, Gaole-delivery, Oier and Terminer, Justices of the Peace, or * other of the Kings Commissioners, shall not in any wife * Nota, the ge

be discontinued by the making or publishing of any new Commission or Associa- nerall words. tion, or by altering of the names of any of the faid Justices or Commissioners, but that the new Justices and Commissioners may proceed in every behalfe, as if the old Inflices and Commissioners had still remained and continued not altered.

Commissions Br.

Kelwey 116. 19 Eliz, Dier 355 Vi. infra pag. 169.

20 H.7.8.

1.5 E. 4 fo 12,

CAP. XXIX.

The Courts of Speciall Justices of Oier and Terminer, of and concerning, 1. Purveyours, 2. Misdemeanours of Villaines, &c. 3. Sums of money collected for houses of Correction, &c. 4. Colledges, Hospitals, and Charitable uses.

And first of Purveyours.

36 E.3 cap 4. Of Purveyours.

Buyers of Victurall, &c.
Takers of Carriage.

That Commissions shall be made to two good men and lawfull of every County, and the third to be of the Kings house. So that if any of the three come not, the two shall proceed to enquire of the behaviour and acts of the said buyers and takers, and how much the said buyers have taken and bought; and how much carriage: and to heare and determine the contempts, outrages, and trespasses in that behalfe, as well at the Kings suit, as of every man that will complaine of them.

These Commissions are to be granted ex merito justicia, and cannot be denied. And it is to be observed, that the action of suit given by the said Acts not popular; so, either the king only is to have it, of the subject only that will

complaine.

And for better information to be made to the faid Justices of the things aforesaid, the Steward, Treasurer, and Controller of the two Houses, (viz., of the King and Queen) at every Quarter or Halfe year shall certific into the Chancery the parcels taken in every Towne, and of every person; and the Chancelor shall send the said Certificate to the Justices which shall be so assigned. And that this Act extend and hold place as well against the Purveyours of the Great Horses of the said two Houses, as against the buyers or takers before named.

2. Concerning misdemeanours, &c. of Villains.

1 R.z.cap.6.

See the Statute of 1 R. 2. cap. 6.

3. Of and for Sums of money collected for Houses of Correction, or for the poore, &c.

39 Eliz.cap.4.

This Court is raised by the statute of 39 Eliz. cap. 4. as by the same appeareth, wherein this is to be observed. That their proceedings, judgements, and erecutions shall remain good and available in law, without any redress to be had by suit in any other Court.

See the Second part of the Institutes the exposition of these statutes.

4. Concerning Colledges, Hospitals, or Almes-houses, or for charitable and lawfull purposes and uses.

39 Eliz. cap.6.

It is lawfull for the Lord Chancelour or Lord Keeper of the Great Seale,

Seale, and for the Chancelour of the Duchy of Lancaster (for lands within the County Palatine of Lancaster) to award Commissions under the Great Seale, or Seale of the County to the Bishop of the Dioces & his Chancelor, and to other persons of * good and sound behaviour, to enquire by the oathes of Twelve lawfull men, &c. as by all other good and lawfull means of all and fingular Colledges, Hospitals, and other places, founded or ordained for the Charitable reliefe of poore, aged, and impotent people, maimed fouldiers, Schooles of learning, Orphans, or for fuch other good, charitable, and lawfull purposes and ties, of Western. intents. And also of Lands, Tenements, and Hereditaments, Leases, Goods and Chattels given or appointed for the like lawfull and chari-thedrall Churtable uses. As also for reparation of Highwayes, of Bridges, and Sea- ches, &c. are exbanks, for maintenance of Free-Schooles and Poore Scholars, and of It extends not to Orphans and fatherleffe children, and fuch like good and lawfull cha- lands in Cities trable uses. And to enquire of the abuses and misdemeanours, mis-imployments, falfities, defrauding the trufts, alienations, and mifgovernments, &c. And after fuch inquiry made upon hearing and examining thereof to fet downe such orders, judgements, and decrees as the faid good and charitable uses may be truly observed in full, ample, and most or Freeschoole, liberall fort, &c. Which orders, judgements, and decrees (not being contrary to the orders, statutes, and decrees of the Donors or Founders) shall stand * firme and good, according to the tenor and purport thereof: which Orders, Judgements, and Decrees are to be certified under the Seals of the Commissioners respectively, either into the Chancery of England, or of the County Palatine of Lancaster.

Chancelour or Lord Keeper, or to the Chancelour of the faid Duchy, for their redreffe therein, &c. and they have power to judge, &c. according to equity.

It is to be observed that when any Act of Parliament both authorise the Lord Chancelour of Lord Reeper to make of grant any Committon under the Great Seale, that he may make or grant the fame without any further warrant, because the king is party to the Act of Parliament, and there cannot be a greater wartant to the Lord Chancelour, ic. then the Act of Parliament,

* No person intereffed,&c. to be a Commissioner.

Colledges in both Universi-Baton, or Winchefter, and Caor Towns Corporate where there is a speciall Governour, &c. Nor to any Colwhich have speciall Vifitors,&c. But this exception extends not. to Leafes, Goods or Chattels.

* The party ... grieved may complain to the Lord

CAP. XXX.

Justices of Gaole delivery.

Their Authority is by Commission in these words.

The Comimflio of Gaol-delivery.
Note, they are called the Kings, Justices.
Their Commission only to them that are in prison.
Note.

Lizabeth, &c. Dilectis & fidelibus suis AB. CD. &c. Salutem. Sciatis quod constituimus vos, tres, & duos vestrum, quorum aliquem vestrum vos prafat' AB. &c. unum esse volumus, Iusticiarios nostros ad Gaolam nostram castri nostri de C. de prison' in ea exist hac vice delibirand. Et ideo vobis mandamus quod ad certum diem quem vos, tres vel duo vestrum (quorum vos prefat' AB. &c. unum esse volumus) ad hoc provideritis, conveniatis apud castrum pradict' ad gaolam illam deliberand' facturi inde quod ad justitiam pertinet secundum legem & consuctudinem requi nostri Anglia. Salvis nobis amerciamentis & aliis ad nos inde spectantibus. Mandavimus enim Vic' nostro Com vostri M. quod ad certum diem quem vos, tres, vel duo vestrum (quorum vos prafat' AB. & CD. unum esse volumus) ei scire seceritis, omnes prisones ejusdem gaola & corum attachiamenta corum vobis, tribus, vel duobus vestrum, (quorum aliquem vestrum ex vobis prafat. AB. & CD. unum esse volumus) ibidem venire fac. In cujus rei testimunum has literas nostras sieri secimus patentes. Teste, &c.

See the fecond part of the Inftir. ffat.de Gloue' cap.9. b 4 E.3. cap.2. 17 R.2. cap.9. c Thrice in the year. and of the if need be. d Nora, few but effectuall words. c 4 E.3. cap.2. f 4 E.3. cap.2. 3 Mar. Br. Commissions.23. 2 R.3. Cot on. 47.

b By the law of the land, ne homines did decineantur in prisons, but that they might receive plenam & celerem justiciam, this Commission was instituted, and by this Commission Baols ought to be delivered their in the year, and offer if need be.

Their authority is by this Commission, which consiste their definitions constituted in definitions.

Their authority is by this Commillion, which conflitteth in d felu words. Conflitments vos Justiciarios nostros ad Gaolam nostram eastri nostri de C de prisonibus in ea existentibus hac vice delibererand. C Their Justices ought to be, no ne gents & sages auters que des places, &c.

Apon this authority and by ftatutes given unto them, thirteen conclusions do

follow.

r. f Instices of Gaole delivery may arraign any man that is in prison in that Gaole upon an Indiament of Felony, Trespasse, etc. before Instices of Peace, though it were not found before themselves, which (as hath been said) Instices of Dier and Terminer cannot do. Instices of Peace shall deliver their Indiaments to the Instices of Gaole delivery.

2. They hall take a panell of a Jury retozned by the Sheriffe, without making any precept to him, as Justices of Dier and Terminer (as both been faid) ought to make. And the reason of the difference is, because a generall commandment is made to the Sheriffe by the Justices of Baole delivery to retorn Juries against their comming: but if they have a speciall Commission, otherwise it is by Hankeford.

3. They may deliber suspects for selony, sc. by Proclamation, against whom there is no sufficient evidence produced to the Great Inquest to indict them, sc. which Instices of Dier and Terminer, or Instices of Beace cannot do.

4. They may inquire and take indiaments of felony, ic. of prioners before them, i proceed upon them. And so was it resolved in an appeal of murder brought by Apharry against morgan, who pleaded that he was auterfoit indiced and convicted of the same felony, and had his Clergy before Institutes of Gaole delivery, and pleaded over to the felony (if the plea allowed.) And so may Institutes of Dier

4 H.s. Enquelt

2 R.3. Coron.47.

Pafch 29 Eliz.coram Rege, inter Apharry & Morgan in Appeal. 9 H.7. 9. 2 R.3. Coron. 47

and Terminer doe, which is to be observed by the judicious Reader, for both of them have authority to enquire, heare, and determine of fuch as be prifoners in the Gaole: and in that case they have a concurrent authority.

5. If a man be indiced before Austices of peace, and thereupon outlaived, and is taken and committed to prifon, the Authices of Baole belivery may award

erecution of this prisoner.

6. They may alligne a Cozoner to an Approber, and make Proces against Stat.de Appellar. the Appellee in a forein Tounty.

7. * They may punish those that let men to baile or mainprise, which are not . Stanfpl.cor.143.c

bailable by law, or fuffer them to escape.

15p the Statute of 1 E.6. it is provided in these words.

And be it, &c. That in all cases whereany person or persons heretofore have been, or hereafter shall be found guilty of any manner of Treason, Murder, Manslaughter, Rape, or other felony whatsoever; for the which judgement of death should or may ensue, and shall be repried to prison without judgement at that time given against him, her, or them so found guilty, that those persons, that at any time hereafter shall by the Kings Letters Patents be assigned Justices to deliver the Gaole where any fuch person or persons found guilty, shall remain ; shall have full power and authority to give judgement of death against fuch person so found guilty and repried, as the same Justices before whom fuch person or persons was or were found guilty might have done, if their Commission of Goale delivery had remained and continued in full force and strength.

8. Here by the judgement of the whole Parliament this conclusion both folwww, that Justices of Gaole delivery, according to the generality of the words of their Commission, may deliber the Baole of prisoners committed for High Treason, which we prefer before any private opinion, especially concluding with

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9. - Juffices of Baole belibery thall fend their Records and Proces betermined, and put in erecution to the Orchequer at Pichaelmas every year to be delive: red there to the Treasurer and Chamberlains, ac. to keep them in the Treasurp.

10. b Juffices of Gaol belivery may receive Appeals of robbery and murder by

Bill, but the Appellees must be in prison before them.

11. E To these Justices Commissions of Association, and Writs of admittance, and Si non omnes (as hath been faid of Juffices of Dier and Terminer)

12. d Justices of Baole delivery thall keep their Sections in the principall and thist Towns of the Counties where the Shire Courts of the same Counties be

13. By the Ratute of 2 & 3 Ph. & Mar. It is provided, That all Commif- 2 & 3.7h.& M. fions of the * Peace or Gaole delivery to any City or Towne Corporate not being a County of it selfe, shall stand and remaine, the granting of any like Commission of the Peace or Gaol delivery in any Shire, Lathe, Rape, Riding, or Wapentake, being of a latter date, to the contrary notwithstanding.

Dee in the Chapter of Dier and Terminer Conclusione 9. moze concerning

Buttices of Gaole delibery. Vide 44 Aff. pl.21.

Dee authorities lately granted to Justices of Baole belivery in the Chapter nert enliving of Justices of Peace.

15 H.7.5.b.

27 E.1. Har. De finibus cap. 3. 4 E.3.cap.2. 1 & 2 Ph.& Mar. I E.6.cap.7. Trealor,&c.

27 E.1.de finib. Cap. 3. Sec 28 E. 1. De Appellatis, the recitall. V.2 R.3. cor. 47. Case de Colinborne. Stanf. 1. cor. 57, 58.8 181. 2. a 9 E. 3.cap.5. 14 H.7.fo. 15.b. b 13 H.4. fo. 10. Dier fo.99. 3 H.7.cap.1. Stanf. pl.cor. c 2 E.g.cap.2. d 6 R. 2. cap. 5.

CAP. XXXI.

Iustices of Peace.

It Anthony Firz-Herbert, one of the Austices of the Court of Common Pleas, and divers others have written of the Australian and power of Austrices of the Peace, both in the Court of the Sections of Peace, as with out; to whole labours I refer the Reader.

And it is such a forme of subordinate government for the tranquillity and quiet of the Realm, as no part of the Christian world hath the like, if the same be due

Lo erecuted.

To the former Areatifes are necessary to be added certain Acts of Parliament made in the 21 year of our late Soveraigne Lord King James, and certain Cabeats, Additions, and Observations necessary to be known. De pace violata; vide

int'leges Alvredi, cap. 36. Edwardi cap.6.

Before the Conquest, De pace violata. 4 H.7-cap.12.

But as a Preface to all that thall be faid of the office and buty of Juffices of Peace, we will begin with that which is enacted by the fratute of 4 H.7. as am. cessary caveat to all Justices of Peace, viz. The King considereth that a great part of the wealth and prosperity of the land standeth in that, that his subjects may live in surety under his peace in their bodies & goods: and that the husbandry of this land may increase and be upholden, which must be had by due execution of Lawes and Ordinances, chargeth and commandeth the Justices of the Peace to endeavour them to do and execute the tenor of their Commission, the said Lawes and Ordinances ordained for subduing of the premises, as they will stand in love and favour of his Grace, and in avoiding the pains that be ordained, if they do the contrary. And over that he chargeth and commandeth, that every man, what degree or condition that he be of, that let them in word or deed to execute their faid authority in any manner forme above faid, that they shew it to his Grace; and if they do it not, and it come to his knowledge by other then by them, they shall not be in his favour, but taken as men out of credence, and be put out of Commission for ever. And over this he chargeth and commandethall manner of men, as well the poore as the rich, which be to him all one in due ministration of justice, that is hurt or grieved in any thing, that the faid Justice of peace may heare, determine, or execute in any wife, that he so grieved make his complaint to the Justice of the Peace that next dwelleth unto him, or to any of his fellowes, and defire a remedy: and if then he have no remedy, if it be nigh fuchtime as his Justices of Affifes come into that Shire, that then he so grieved shew his complaint to the same Justices; and if he then have no remedy, or if the complaint be made long afore the comming of the Justices of Assise, then he so grieved come to the Kings Highnesse or to his Chancelour for the time being, and shew his griefe: and his said Highnesse then shall fend for the faid Justice to know the cause why his said subjects be not eased, and his lawes executed. Whereupon if he finde any of them in default of executing of his lawes in these premises, according to his high

high commandment, he shall doe to him so offending to be put out of the Commission, and furthermore to be punished according to his dements. And over that his faid Highnesse shall not let for any favour, affection, cost, charge, nor none other cause, but that he shall see his lawes to have plain and true execution, and his subjects to live in furery of their lands, bodies and goods according to his faid laws, and the faid mischiefs to be avoided, that his subjects may increase in wealth and prosperity to the pleasure of God.

and where the words of the fato Act be: And further to be punished according to his demerits. These words are so to be understood, that he shall be multhed in an ordinary course of justice by way of indiament upon this Ac, to his contempt, tc. and not by any absolute power, as bath been often obserbeb.

It is to be observed, that when Justice Firzherbert and some others bid mite of the authority of Justices of Peace, the Commission of the Peace food operburbened and incumbed with divers fatutes, some whereof were time and some lince repealed: and with some, whereas there was none such and fuffed with many bain and unnecessary repetitions, and many other corruptions crept into it by mistaking of Clerks, sc. For amendment and correction whereof (being a matter of fo great importance) Sir Christopher Wray Chief Intice of England, Mich. 32 & 33 Eliz. allembled all the Judges of England, mb upon perufall had of the former Commission of the Peace, and upon due consideration had thereupon, and often conferences between themselves, they pholoed upon a reformation of the former, with divers additions and alterations both in matter and method, as it now frandeth at this day; and there neewith pet another reformation of that alfo; for fince that time divers statutes then in topce have been repealed, and divers have expired. As for example, All the fratutes of Liveries inquirable by Justices of Beace are repealed by the statute of 3 Car. cap. 4. faving the Katute of 1 R. 2. cap. 7. inquirable befoze Juftices of Affle, Vide supra pa. 159. Atso the statute of 27 H.8. cap. 22. that the owner of 27 H.8.ca. 22. any feite or precine, ac. of any dissolved religious house under the value of 200 L per annum, for the keeping of honeft and continuall houthold thereupon, and inquirable by Justices of Peace is repealed by 21 Jac. Regis cap. 28. And the flatute of 13 R.2. cap.8. and 4 H.4. cap.25. for taking by any Inholders in gain above a half penny in a buthell of Dats over the common price in the mar, bet, and inquirable by Justices of Peace be also repealed by the said Ac of 11 Jac. Likewise the Ctatute of 39 El. cap. 2. concerning husbanday and til: lage, which being but a probationer for a time, toas discontinued in Jae. And the statutes concerning honses of husbanday and tillage in 4 H.7. 7 H.8. 27 H.8. E. 6. and Fliz. are all repealed by 21 Jac. and divers others, tc.

It is a good rule therefore for all Judges and Justices whatfoever, that have jurisdiction by any Catute, which at the first was tempozary, or for a time, to consider well before they give judgement, whether that statute have been contimed of made perpetuall: and if it were at the first made perpetuall, whether if be not repealed or altered by any latter statute. Erudimini qui judicatis terram. See in the Second part of the Institutes the Exposition upon the Statute of

21 H.8.ca.5.

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Inflices of Peace may enquire if Estreats be not thewed by Sherifs, te. to the party indebted and totted. A necessary law for the ease of the subject.

Concerning the nomination of Justices of Peace, fee the Statutes of 12 R.2. cap.2. 2 H.s. star. 2 cap. 1. 18 H. 6. ca. 11. whereunto you may add, that before all thefe another Ad not in print was made in 28 E.3. as well for their nomination, as how and by whom they thall be discharged. Certain it is that he, that is named in the Commission of Peace under the Ozeat Seal to be a Justice of Peace, is alawfull Justice of Peace,

Compare the old with the new Comission, and the reformations,additions and alterations will ap-Mich. 22 & 33 El. the Commission of the Peace ieformed by all the Judges of Eng-13 H.4.ca.3. 8 H.6.C3.4. 8 E.4.ca.2.&c. 5 El.ca.2,

13 R.2.ca.8. 4 H.4.c3,25.

39 El.ca. 2. 4 H.7.ca.19. 7 H.8.ca. 1. 27 H.8.cap.12. 5 E.6.cap.5. 5 El.ca. 1.

42 E. 3.cap.g. W.1.cap.19. 7 H. 4.ca.3.

Rot. Par. 18 E. 3: DU.17. 37 E.3.nu.18. 50 E.z.nu.54.

21 Jac.Rg.ca.4.

At the Parliament holden Anno 21 Iac. Regis, there was an excellent law made, entituled, An Act for the ease of the Subject concerning Informations upon penall flatutes , which Act for that it principally concerneth Buffices of Deace, is here inferted in hac verba as followeth.

This was the ancient and prudet policy of Parliaments/as before it hath appeared) that justice might be administred & tried in their pronot to be drawn up to the Courts at Westin' for the a Of this kind

Whereas the offences against divers and fundry poenall laws and statutes of the Realme may better, and with more ease and lesse charge to the subject, be commenced, sued, informed against, profecuted and tried in the Counties where fuch offences shall be committed. And whereas the poor Commons of this Realm are grievously charged, troubled, vexed, molested, and disturbed by divers a trouper Counties and blesome persons, commonly called Relators, Informers, and Promoters, by profecuting and enforcing them to appear in his Maiesties Courts at Westminster, and to answer offences supposed by preamble expres- them to be committed against the said poenall laws and statutes, or else to compound with them for the same

of men, it was formerly truly faid, Hoc genus bominum semper vitabitur, & tamen semper in civitate retinebitur. But this law confifting of feven parts remedied all the former inconveniences, and the abuses of these troublesome per-

b Nota before Justices of I Affile. 2 Nisi prius. 3 Gaol delivery. 4 Oier & Term. 5 Peace. But the greatest care for the due execution of this Act will belong to the Justices of Peace, whereof there be many learned in the laws. c Note this Act giveth Justices of Peace no new

power in cafes

where former

1. For remedy whereof be it enacted by the Authority of this present Parliament, that all offences hereafter to be committed against any penall statute, for which any common Informer or Promoter may lawfully ground any popular action, bill, plaint, fuit or information b before Justices of Assise, Justices of Niss prius, or Gaol-Delivery, Justices of Oier and Terminer, or Justices of the Peace in their generall, or quarter Sessions, shall after the end of this prefent Session of Parliament be commenced, sued, prosecuted, tried, recovered and determined by way of action, plaint, bill, information or indicament before Iustices of Assise, Iustices of Nisi prius, Iustices of Oier and Terminer, and Iustices of Gaol-Delivery, or before the Iustices of Peace of every County, City, Borough, or town corporate, and liberty, having power to enquire of, hear and determine the same within this Realm of England or dominion of Wales, wherein fuch offences shall be committed, in any of the Courts, places of Iudicature, or liberties aforesaid respectively, only at the choice of the parties, which shall or will commence suit, or prosecute for the same, d and not elsewhere, save only in the said Counties, or places usuall for those Counties or any of them.

Acts gave them none, and so of the rest of the Justices here named. d So as they cannot be commenced, &c. in any of the Kings

Courts at Westminster.

e By this branch processe of Outlawry doth lye upon every popular action, a necessary clause for execution of Justice.

2. And that like processe upon every popular action, bill, plaint, information or fuit, to be commenced, or fued, or profecuted after the end of this present Session of Parliament by force of, or according to the purport of this Act, be had and awarded to all intents and purposes as in anaction of trespasse vi & armis at the Common

f This clause was 3. f And that all and all manner of informations, actions, bils, added that the Kings Maje fly should be bound expresly by this Act, that no information in the Courts at Westminster should be exhibited by the Kings Atturny generall, by any common Informer, or other person whatsoever. Note the generality of thefe words. plaints, plaints, and fuits whatfoever hereafter to be commenced, fued, profecuted, or awarded either by the Atturny Generall of his Majesty, his heirs, or fuccessors for the time being, or by any Officer or Officers whatfoever for the time being, or by any common Informer, or other person whatsoever in any of his Majesties Courts at Westminster, for or concerning any of the offences, penalties or forfeitures aforesaid, shall be void, and of none effect, any law, custome,

orusage to the contrary thereof notwithstanding.

4 And be it further enacted by the Authority aforesaid, that in all Informations to be exhibited, and in all bils, counts, plaints, and declarations in any action or fuit to be commenced against any perfon or persons, either by, or on the behalf of the & King or any other g Note, the King for or concerning any offence committed, or to be committed against expressly named any penall statute, the offence h shall be laid and alleadged to have the proper Counbeen committed in the faid County where such offence in truth ty was committed, and not elsewhere. And if the Defendant to any fuch Information, action or fuit, pleadeth that he oweth nothing, the true inflituor that he is not guilty, and the Plaintif or Informer in fuch information, action or fuit upon evidence to the Iury that shall try the cini viciniera issue, shall not both prove the offence laid in the said Information, fulla presumunaction or fuit, and that the same offence was committed in that Countrele Informers ty, then the Defendant and Defendants shall be found not guilty.

b Shall be laid in This clause is but in affirmance of tion of the Common law, for vitur scire, and for they were best trufted, where

they were leaft known. This is a very beneficiall clause for every Defendant to take hold of.

5. And be it further enacted by the Authority aforesaid, that no Officer or Minister in any i Court of Record shall receive, file, or the Courts be enter of Record any Information, bill, or plaint, count, or declaration, grounded upon the faid penall statutes or any of them, which before by this Act are appointed to be heard and determined in their the first part of proper Counties, untill the Informer, or Relator hath first taken a this Act. corporall oath before some of the Judges of that Court, that the offence or offences laid in fuch information, action, fuit, or plaint, 4 The Informer was or were not committed in any other County, then where by the faid information, bill, plaint, count or declaration the fame is, or are supposed to have been committed, and he beleeveth in his conscience the offence was committed within a year before the in- clause also for formation or fuit within the same County, where the said infor- the Defendant. mation or fuit was commenced, the fame outh to be there entred of a year before the Record.

6. And beit also enacted by the Authority aforesaid, that if any Information, fuit, or action shall be brought, or exhibited against any person or persons for any offence committed, or to be committed against the form of any penall law either by, or on the behalf of the King, or by any other, or on the behalf of the King and The reasons of any other, it shall be lawfull for such Defendants to plead the ge- this clause were,

fore Justices of Affile, and other Justices named in

oath before his information, &c. be received. A beneficial! a year before the information.

Vid. 7 Jac.ca. 9. 21 Jac.cap. 13.

Courts aforefaid, specially before Justices of peace, there are not such skilfull Prothonoraries and Clerks for good pleading as were in the Kings Courts at Westminster; and therefore the makers of this law provided that the Defendant might plead the generall issue. 2. For the ease and benefit of the subject, great charges growing by special pleading. 3. For avoiding of demurrers upon strict, and nice points of pleading. 4. For avoiding of waits of Error, which often are brought in respe & of speciall pleading.

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nerall issue, that they are not guilty, or that they owe nothing, and to give such speciall matter in evidence to the Iury that shall try the same, which matter being pleaded had been a good and sufficient matter in law, to have discharged the said Defendant or Defendants against the said information, suit, or action; and the said matter shall be then as available to him or them to all intents and purposes as if he, or they had sufficiently pleaded, set forth, or alleadged the same matter in bar, or discharge of such information, suit, or action.

Provided alwayes that this Act or any clause contained therein shall not extend to any information, suit, or action, grounded upon any law or statute made against Popish Recusants, or for, or concerning Popish recusancy, or against those that shall not frequent the Church and hear divine service, nor to any information, suit, or action for maintenance, champerty, or buying of titles, nor to any suit, or information grounded upon the statute made in the first year of the reign of our Soveraign Lord the King, of a Subsidy granted to the King, of Tunnage, Poundage, Wool, &c. nor for, or concerning the concealing or defrauding the King his heires or successors of any Custome, Tunnage, Poundage, Subsidy, Impost, or Prisage, or for transporting of gold, silver, Ordinance, Powder, shot, munition of all sorts, Wool, Woolfels, or Leather, but that such offence may be laid or alleadged to be in * any County, at the pleasure of any Informer, any thing in this Act to the contrary notwithstanding.

This provile referreth only to the County,&c. So as no infor-

mation, &c. grounded upon any of the states in this provide mentioned can be commenced, &c. irrany of the Kings Courts at Westminster, but before the Justices of Allies, justices of Nessprius, or Gaol delivery, lustices of Oke and Terminer, on Justices of Peace.

4 H.7.cap 8.

31 Iac.ca;18.

There whis another milchet which tap heavy upon the tubject, whereat avantage might be taken by any Informer, which was not provided for by this Aa,viz. divers former values, which in respect of the alteration of times lay as inares upon the people, and at this day could not be performed. For example: That a yard of broad-cloth of the finest making learlet grayned, or other cloth grayned, what colour loover it be, should not be fold above the value of 16s a broad yard, to. Which Act and many other Acts of Parliament of tike nature, and other obsolete laws to a very great number where at this Parliament interly repeated, and made bold. The advise therefore the Austice of Poace (for to him we principally direct our speech, though it concern the rest of the Instices before named) seriously direct our speech, though it concern the rest of the Instices before named) seriously to read over that Act, where all those obsolete laws are particularly mentioned and repeated, and therefore no information, to can be commenced, at, upon any of them.

At the same Parliament also Anno 21 Jac. Regis, an other good and profitable law was made concerning Justices of Pocace and others, the tenor where

of is as followeth.

21 Iac.ca,12.

The Title. Am Att to enlarge and make perpetuall the Att made for ease in pleading against troublesome and contentious suits prosecuted against sustices of the Peace, Majors, Constables, and certain others his Majesties Officers for the lawfull execution of their office, made in the 7 year of his Majesties most happy reign.

Whereas an Act intituled, an Act for ease in pleading against troublesome and contentious suits prosecuted against Iustices of the Peace, Maiors, nd

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Majors, Constables, and certain others his Majesties Officers for the 7 Jic. regis cars. lawfull execution of their office made in the feventh year of his Maiesties most happy reign of England, was made to continue but for feven years, and from thence to the end of the next Parliament, after Peace, the faid feven years which by experience hath fince been found to be a good and profitable law. Be it therefore enacted by the Kings towns corporate. most excellent Majesty, the Lords Spirituall and Temporall, and the Commons in this present Parliament assembled, and by the authority of the same, that the said Act shall from and after the end of 6 Tithingmen. this present Session of Parliament be perpetuall, and have continuance for ever.

not to any Officer not named in that Act. Made perpetuall.

That Act extentended to I Juffices of a Maiors er Bai lifs of Cities or 3 Headborows. 5 Conflables. 7 Collectors of Sulfidies and Fifteenthe, and

And be it further enacted by the Authority aforesaid, that all This Act of Churchwardens, and all persons called Sworn-men executing the office of the Churchwardens, and all Overseers of the poor, and allothers, which in their aid or affistance, or by their commandment shall doe any thing touching or concerning his or their office, or offices, shall hereafter be enabled to receive and have such benefit and help by vertue of the faid Act, to all intents, constructions, and purpoles, as if they had been specially named therein.

21 Jacobi extendeth to 1. Cherchwardes. 2. All persons called Swornmen executing the office of Churchwardens. 3. All Overfeers of the poor. 4. All others in

their aid and affistance, and not to any other Officer or person not named in this A.?

And whereas notwithstanding the said statute, the Plaintif is at liberty to lay his action which he shall bring against any Iustice of Peace, or other Officer in any forain County, at his choice, which hath proved very inconvenient unto fundry of the Officers, and persons aforesaid, that have been impleaded by some contentious, and troublesome persons in Countries far remote from their places of habitations.

Beit therefore further enacted by the Authority aforesaid, that if any action, bill, plaint, or suit upon the case, trespasse, battery, or false imprisonment shall be brought after the end of this present Seffion of Parliament against any Iustice of Peace, Maior, or Baylif of Battery City, or town corporate, Headborow, Portreve, Constable, Tythingman, Collector of Subfidy or Fifteens, Churchwardens, and persons called Sworn-men executing the office of Churchwarden, or Overfeer of the poor, and their Deputies, or any of them, or any other which in their aid, or affistance, or by their commandment, shall do any thing touching or concerning his or their office or offices, for or concerning any matter, cause or thing by them or any of them done by vertue or reason of their or any of their office or offices, that the faid action, bil, plaint, or The actions afuit shall be laid within the County where the trespasse or fact shall be done and committed, and not elsewhere. And that it shall be lawfull to & for all and every person, and persons aforesaid, to plead thereunto the generall iffue, that he or they are not guilty, and to give fuch speciall To plead the gematter in evidence to the Iury which shalltry the same, as in or by the faid former Act is limited or declared. And that if upon the tryal of any luch action, bill, plaint, or fuit, the Plaintif or Plaintifs therein shall

This branch extendeth to

fore faid thall be laid in the proper County.

The Plaintif upon the evidence must prove that the cause of action was done or had in the proper County. not prove to the Iury which shall try the same, that the trespasse, battery, imprisonment, or other fact, or cause of his, her, or their such action, bill, plaint, or fuit was, or were had, made, committed, ordone within the County where such action, bill, plaint, or suit shall be laid, That then in every fuch case, the Iury which shall try the same, shall find the Defendant and Defendants in every such action, bill, plaint, or fuit, not guilty, without having any regard or respect to any evidence given by the Plaintif or Plaintifs therein touching the trefpasse, battery, imprisonment, or other cause, for which the same action, bill, plaint, or fuit is, or shall be brought: and if the verdict shall passe with the Defendant or Defendants in any such action, bill, plaint, or suit, or the Plaintif or Plaintifs therein become nonsuit, or suffer any discontinuance thereof, that in every such case the Defendant or Defendants shall have such double costs, and all other advantages and remedies, as in and by the faid former Act is limited, directed, or provided.

zr Jac.ca.15.

see also another Act the same Parliament, anno 21 Iacobi regis, intituled, An Act to inable Sudges and Sustices of the Peace to give restitution of possession in certain cases.

I Judges or Juflices of the Kings Bench-4H.7.18.b. 7 E.4.18. 2. Juftices of the Peace. 8 H.6. cap 9. Lib-9 t.118.b. 2 H.8. Kelw. 159. Not Inflices of Ocr and Terminer, nor any other Iustice. In flead of diffeifivit which was formerly in the indictment, now it Chall be faid, ejecit, expulit, &

Be it enacted by the Authority of this present Parliament, that such Iudges, Iustices, or Iustice of the Peace, as by reason of any Act or Acts of Parliament now in force are authorised, and inabledupon inquiry to give restitution of possession unto tenants of any estate of freehold, of their lands, or tenements which shall be entred upon with force, or from them withholden by force, shall by reason of this present Act have the like and the same authority and ability from henceforth (upon indicament of such forcible entries, or forcible withholdings before them duly found) to give like restitution of possession unto Tenants for tearm of years, Tenants by copy of Court-rol, Guardians by Knights service, Tenants by Elegit, Statute merchant and staple of lands, or tenements by them so holden, which shall beentred upon by force, or holden from them by force.

See 8 H.6 cap.9. & 31 El,cap.11.

amovit, or delinuit. This Act extendeth to 1. Tenant for years. 2. Tenant by coppy, &c. 3. Guardens en Chively.
4. Tenant by Elegit. 5. By Statute merchant. 6. By Statute Raple, which no former Act extended unto.

In Termino Paich. 6 E.1. Coram rege prima fuit inflicatio Iusticiariorum pro pace conservanda.

Rot. Parl, 18 E. 1. 10. 3. nu. 41. Homines de Chesershire qui onerati sunt de servientibus pacis sustentandis, petunt exonerari de oneribus statut' Winton, &c, Rex non babet consistium mutandi consuctudines, nec statuta sua revocandi.

The Lord Chancelor and others of the Privy Councell doe remove divers Justices of Beace for that they were retayning to the Archbithop, rc.

See a profitable and good law for Austices of Peace in the Parliament Roll, and not in print.

But let us return to the buty of a Justice of Peace, for Melius est recurrere quam male currere.

One or more Inftice or Inftices of Peace cannot make a warrant upon a bare furmise to break any mans house to search for a Felon, or sor from goods, for they being created by Act of Parliament have no such authority granted unto them by any Act of Parliament: and it should be full of inconvenience, that

Dorf. Clauf. An. 8 R. 2 m. 5.

Rot. Par. 3 R. 2. nu. 39. Regula. 31.

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it hould be in the power of any Justice of Peace being a Judge of Record mon a bare luggestion to break the house of any person of what state, quality, of degree foever, and at what time foever, either in the day of night upon fuch furmiles. But if the party suspected be indicated, then the Sherif by force of the hings wit may bemand the party indiced to be delibered; and that not done, be may break open the house, ic. and apprehend the Feion, for that the kings wait is a Non omittas propter aliquam libertatem : but if the lings processe be in debt, trespalle, te. at the suit of a party, there the Sherif by force of the Bings wait cannot break open the house of the subject. And so is the book in 13 E.4. fo. 9. which faith; It was holden, that for felony or suspitton of felos 13 E.4.9.20 E.4. ny a man may break the house to take the Felon, and two reasons are peeloed 6.b. He may enin the book. 1. Because it is for the Common weale to take them. 2. Because ter into the the bing bath an interest in the felony, and in such case the wait is a Non omittas proprer aliquam liberratem : but otherwife it is for bebt , or trefpalle, the Scelib. s. f. 91.92. Sherif or any other cannot break the house to take him. And pet it is to be Semains cale. understood, that if one be indicted of felong, the Sherif map by processe thereupon after denyall made, tc. break the house for his apprehension, or upon Due and 7 E.3.16.29 E.3. my of one that is flain or wounded, so as he is in danger of death, or robbed, the 9. 2 E.4.8. hings Officer that pursueth may (if denyall be made) break a house to appre- 98.4.26. bend the delinquent: but for Justices of Peace to make warrants upon furmis les, for breaking the houses of any subjects to search for selons, or froin goods, is against Magna Carta, Nec super eum ibimus, nec super eum mittetnus, nis Mag. Cart.c. 29. per legale judicium Parium suorum, vel per legem Terra : and against the * fta. * Read the star. tute of 42 E.3. cap.3.&c. And we hold the resolution of the Court, viz. of Brudnell, Pollard, Broke, and Fitzherbert in 14 H. 8. to be law, that a Inffice of 14 H. 8. fo. 16. 2. Peace could not make a warrant to take a man for felong, unlette be be indiced thereof, and that must be done in open Sestions of the Peace. For the Austice himfelf cannot arrest one for felony, untelle he himfelf fusped him, (as any other may) and by the same reason he cannot make a warrant to another. And all this appeareth in that book, and is agreeable with our former books in 42 Aff.p. 5.& 11. & 24 E.3. tit. com.Br. 3, and with reason, for this warrant to take a Felon hould be in nature of a Capias for felony, which cannot be granted before indiament, not after indiament, but in open Court. And this is the reason wherefore Vid. 1 R. 3.c. 3. Justices of Peace before indiament could not have let any charged with felony 3 H.7 ca 3. or impition to bail, or mainprile, because Justices of Peace are Judges of Res 1 & 1 Ph. & Mar. mid, and ought to proceed upon Record, and not upon furnities. Sed diffinguenda funt rempora, & concordabis leges: For fince the statutes of 1 & 2 Ph. & Mar cap. 13, and 2 & 3 Ph.& Mar.cap. 10. (the words whereof be, That the faid Justices, or one of them being of the Quorum, when any such prisoner is brought before them for any manflaughter, or felony-shall take examination-&c.) if amp person be charged with any manner of felony, and information be given to a Justice of Peace of the felony or suspition of felony, and feareth that the Bings peace may be broken in apprehending of him, the faid Justice may make a warrant to the Constable of the town to see the Kings peace kept in the apprebending and bringing of the party charged with or suspected of the felony befor him, and the party that giveth the information of his knowledge or fuspition to be present and arrest the delinquent; and in this manner it is implied and intended by the faid statutes for the prisoner to be brought before them: and this (as we take it) agreeth with the common use and observance ever lince those flatutes. And this agreeth also with the said book in 14 H.8. that a Ju-Lice of Deace map make his warrant for the falvation of the peace, meaning to allift the party that knoweth or hath faspition of the felony. But in this tale neither the Constable, not any other can break open any house for the appres bention of the party inspected or charged with the felony, for it is in law the arrest of the party that hath the a knowledge of suspition, who cannot break open a 2 H.7.3 & 15.

house the door

ca.17. & 2 & 3 Ph.& Mar.c. 10.

4H.7.2,3. 5 H.7.4: 10H.7.17. 20 H.7.12. 7 E.4.20. 8 E.4.3.b. to E.4. 17. 9 E.4.26. 11 E.4.4. 13 E.4.9. 7 H.4 35. 17 E.4.5. 27 H.8.23.2. Dier 7 Eliz.236.b.

* 20 E.4.fo.6. 17 E.4. 5.2. Lamb.to.188.189

T * Baile and
mainprise.
See the second
part of the Institutes. W. I. ca. 15
fol. 472, &c.
Glanv.li.14.ca. I.
W. I. cap. 15.
27 E. I. stat. de
finib is cap. 3.

To fbail and
bailment.

a Bracton lib.3.
fol.123.
And herewith
agreeth the Regifter.fo.133.b.
Fletalib.1.ca.26.
Mirror ca.2. § 14

* Cuft,de Norm. b 24 E.3.33. 25 E.3.42.b. mainprife 1. 3 E-3.cor.354. 2 Eliz.Dier 179. F.N.B.246.c. 6 33 E.3. Mainprife 12. d This agreeth with the former Etymologic, e 36 E.3.it. 13 ac' 4 H.6.8. 22 H.6.59. 32 H.6. 10.4.3c' 39 H.6.27. 21 H.7.33. * Vid. infra. † f 36 E.z. ubi fup. Br.Mainprise 89

st H.7.20.b. per Fineux. F.N.B.251.d.

See Lamb.fo.352 353.F.N.B.251.f

Nota, amercientur. * Vid. supra. † any house: but if the 'door of the house be open, he may enter into the same, and arrest the party. Thus much upon reading of some that have written of the Ds. fice of Justices of Peace, we have thought good to adde. For though commonly the Houses or Tottages of poore and base people be by such Warrants searched, ac. yet if it be lawfull, the houses of any subject, be he never so great, may be searched, ac. by such Warrant upon bare surmises.

* Concerning bailement and mainprile, and what offenders were baileable by the Common law, you may reade in the Second part of the Inflitutes, W.1.ca.15. Pow something is necessary to be added in respect of some variety of opinions touching the true diversity and signification of Bailment, Painprize, Fideijuss. Surety, Pledges, Plevin; Plevina, Replevin, Borough, and the like. And first

of Batte.

Some derive this word from the French word Bailler, id est, Tradere, to de liver, because the prisoner is delivered out of prison; but it cannot so be derived: for the entry is, traditur in 07 per ballium, and then the sense (02 non-sense) should be, he is delivered into delivery. But this word Ballium is truly setched from the French Bown Bail, that signifieth a Bardian, keeper, 02 Baoler: and herewith agreeth Bracton, who saith, Non erit ulterius per ballium dimittendus. And againe, Per ballium dimittatur usque adventum Justiciariorum, alioquin remaneat in prisona: and in the same page, tradas in ballium 12 probis hominibus. The reade not in Britton of this word Baile, but of some other words hereaster sollowing. Que plevissent corps de home ceux ne sont my proprement pledges mes sont manipernors pur eco que ilz supposent que ceux plevisable sont livers a eux per baile corps pur corps.

There bailment is called a living prison.

b A man arrested or imprisoned (and bailable) for selong that be bailed before it appeareth whether he be guilty or no. But it a man be convicted by verdid or confession, sc. he is not bailable, because it appeareth that he is guilty. So, is upon examination a man confesseth a selong, if the Pittimus be for selong confessed, he cannot be bailed.

. By Shard there is a divertity between Bail and Mainpile; for the entry of the bail is, that fuch an one traditur in ballium, in which case they be his a Bar-

dians: and if they fuffer him to escape, they thall answer for it.

c And where it is faid there, Er per quoidam ilz ierra pende, it was spoken but in * rerrorem, and thereupon a Quere is made of it. And that it was no felong in ancient time, hear what the Hirror saith. It is abusion to think that such pain thould be awarded to the Bail, as to the Principals which made default, where they were but amerciable in that case.

f And where any man is delivered in ballium, he may fately be kept by his Ball for their indempnity, because the Court of Justice doth deliver him unto them to

be fafely kept.

The manner of the several entries of the bail is worthy of observation, because it is only attained unto by observation of presidents, and the course of Courts.

And first in case of bailment so, selong by the Common law, those that do bail him are severally bound to the king by Recognisance in a certain summe, that the prisoner than appear at a certain day, sc. Et ultra quilibet corum corpus procorpore, &c.

The bail of a felon before two Institutes of the Peace, whereof one to be of the Duorum by the statutes of 1 & 2 Ph. & Mar. & 2 & 3 Ph. & Mar. is for the felon in bouble, and for each of the bail in single. As for example: If the felon be 40 li. the bail is 20 li. a piece. And herein to observe in effect three things. 1. Ad comparendum at the next Daole belivery. 2. Ad standum recto de felonia pradicta. 3. Ad respondendum dicto Domino Regi, &c. See the Second part of the Institutes, the statute of Parlebridge, cap.27. if the party bailed Proprer privilegium clericale respondere noture it, non americantur illi quibus traditus suit in ballium. There must be also a Liberate in that case to the Baoler, if the selon be somerly committed to prison, to deliver him out of prison.

Befoze the faib fratutes of 3 E. r. cap. 1 5. 27 E.r. cap. 3. and 1 & 2 Ph. & M. cap. 13. If any perfon had been let to bail that was not bailable : by law this amounteth to a negligent escape, and shall be punished as a negligent escape of afelon Chall be, that is, to be fined at ; li, But by the fratute of 1 & 2 Ph. & Mar. the Justices of Gaole velibery thall in that cale let what fine upon the Justices of Beate, st. they thall think fit. Apon a Capias, and a Cepi corpus returned, the entry is traditur in ballium 8 die Maii Anno i's Regis H.8. lo. Long, &c. ufq; diem Mercurii prox' futur', & fic de die in diem, & termino in terminum, quoufq; placitum prædicum terminetur, viz. quilibet eotum corpus pro corpore.

If A be in cuftodia Marelchal' in the Bings Bench, ta Bill of Debt be brought against him; and the Defendant finde B for his bail, B entreth a Recommisance to the plaintife with this condition precedent, Qhod fi contigerit prad' defendentem debit' & damna illa præfato querenti minime folvere, aut le prisona Mare-

challi ea occasione non reddere, that then he would fatisfie the fame.

Note, In thefe perfonall actions the baile is only bound, their Recognifance 11 H.7.40.b. b generall, and of no certain fumme, as it is in cafe of felony: and against him that is by bail in the Bings Bench, dity ftranger in the same Terminap sue him by Bill in any personall action; otherwise it to if he were by Mainipaige de die in diem. But if A be outlawed in any performall action, and taken by force of a Capias Uclegatum, and plead any plea friable by the Country in abothance of the Dutlaway, as that he was commoraint in another County, tc. In this case A hall be bailed, and the entry is; Super hoc, T B. & B T. manuceperunt prafat. A. habendum corpus ejus hic, &c. & fie de die in diem in quemlibet diem placiti, groulque placitum prædictu terminetur, & judicium inde redditum fuerit, viz. quiliber corum corpus pro corpore: Et prædictus A assumplit pro sciplo essendi tune hic ad quemibet diem placiti prædicti lub pæna 40 li. &c. li contingat iplum A ad aliquem diem, &c. defaltam facere, aut fectam fuam in hac parte non profedui. Rote, wherefoeber the principalt is bound, it is in a certain fumme.

And where some do hold, that in all cases when any statute enaceth that the body of the Delinquent thall be committed to prifor at the will of the King, he cannot be let to Painpolfe before the Kings will be known; The Rule is good if it be rightly im der flood; for he cannot in that cale by force of any fuch statute be impiloned, before he be indicted, convicted, and indgement given, and then he cannot be bailed or letten to mainprife, because this offence appeareth, as hath

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And the case there cited in 24 E.3. upon the statute of 2 E.3. cap.3. for going armed in Westm. Hall, tc. the Book satth, That Thomas Figgot Chivaler fuit araine per Shard, &c. which proveth that he was invided, arrained, and les gally proceeded with, neither was his armour forfeited before conviction. And note, that the faid Ad in that case giveth the forfeiture of his armour, and impair forment: and therefore in that case he thall not be fined: but Sir Thomas Figgor might have been batted before conviction.

In the next place we are to speak of Apainpaile, Manucaptio, which deribeth

it lelf, and fignifieth a taking into the hand.

Every bail is manufalle, (for those that are bail take the person bailed into their hands and autoby) but every mainprife is not a bail, because no man is bailed but he that is accested, by fir prison: for he that is not in custody or pris fon cannot be delivered out, as before it appeareth. But a man may be mainperned which never was in pollon, and therefore manipalle is more large then bail. As in an Appeal of felony, the describant wage battell, st. and a day appointed, sc. the plaintife thall finde mainpille, te. to appear, te. And get he never was in wison or under custody. And fometime these mainpernors are called pledges. Also if a be in execution for debt, te. at the fuit of T, and fueth a Scire fac' upon arelease of the tite, the Entry is, Et super hoc prædictus A. dimittitur per manucape ED. EF. qui eum manuceperunt, ad habendum corpus ejus hic ad præs fatum terminum, & sie de die in diem, &c. quousque inde judicium redditum fueric. Et fi pro prædict. T. transferit, exequatur, viz, quilibet sub pæna 40 li. quas fa ice 37.

25 E.3.39. ¿ E.3 tit.cor. 40 Aff. 42. 3 E.T.cap.15 27 E.1. fat. de finibus, cap 3.

Hil. 18 H. 8. Bendl, This bail is determined by the judgement, if the principall be then there.

9 E.4.2.3. See before cap.of the Kings Bench.

Here the Bail are bound in no fum but corpus pro corpore, the principall in a certain fum.

Stanf.pl.cor.77.b

24 E.3.33. Sir Tho. Figgots cafe

Of mainpaife.

17 E.z. fo. 2. 17 Aff. p.1. 5 E.3.21. 3 2 E.3. Mainprife. 23. 9 H.4.3.1H.6.6 30 E.3.20. 26 E.3.12. 11 H.4.43 12 R.2. conus quilibet 8 H 6.30.

· Regifter. F.N.B. 249.250. Brad.lib.3.154. # 33 E.3. main-prile 12. 36 E.z. ib 13. I R.2 tit.bill 9. 9 E.4.12.7 H.8.4 31 H.6.10. 32 H.6.4. 39 H.6.37. 21 H.7.33.1 Vid. 4 H.6.8. per Cokeine. Of Pledges. Glanvil li. 10.c.5 Stat.de offic.cor. 4 E.I. Plegii de profequendo. 6 F.N.B.31.f.& 195. h. 17 E.3.75 b. Lib.8.61.& lib.5. 49. 2. Brad.li 4.f.254.2 * Regula. e Regist. 188. F.N.B.19. 18 E.4.9. d Vid. 2 H. 6. f. 15 2 part of the Inft. W 2.cap.2. e 31 E.3. main-Prife 21. 42 E.3.7. acc' f 12 El.Dier 288. 20 E.3.pledges 11 9 E.4.27. 2 H.4.17. 18 E.49. 2 H.7.1.17. .

g See Mag. Cart. cap. 8. a part of the Institutes.

Surety, Securitas. h Regist. F.N.B. 8c. See the third part of the Inftir. cap. Fugitives i 2 H.7.fo. 2. 13 H.7.10 b. 4 13 H.7.fo. 10.b. 14 H.7. 8. per Fineux & Trem. Thefe words are well explained. Hil.30 Eliz coram Regeinfra. 1 Hil. 30 Eliz.co. ram Rege.

quilibet recognovit, &c. ad opus ipsius T. levari, &c. si contigerit ipsium A. ad aliquem diem placiti desaltam sacere, seu idem placitum cum essecutione prosequi, vel se ab executione judicii, si pro præd. T. reddatur versus ipsium A. saciend. retrahere, &c. And this is properly in the Entry said, by mainprise, and no battle, because it is sor the plaintise in the Scire sac' who was in execution. Pow sor as much as every batt is a mainprise (as bath been said) batt is oftentimes tearmed in our Books by the name of mainprise as before it hath partly appeared, and as it appeareth in the "Wirit De Manucaptione. 38 E. 3, so. 14, 11 H.6. 31. 50 E.3, 11. 1 H.7.1. And in divers Acts of Parliament, Acton Burnell 11 E.1. 4 E.3, cap. 2. 23 H.6, cap. 10. 1 & 2 Ph.& Mar. cap. 13.

Lattly, a there is a manifest diversity between De die indiem, and a bail: for be that is by mainvaile De die in diem no Bill can be maintainable against bim:

otherwife it is against him that is by bail per curium curia.

Plegii and Plegiatio are derived of the French word Pleige, which fignifieth one that undertaketh for another, a furety, fideijusfor. Pow as every bail is a mainprife, so every bail and mainprife is exvitermini plegiatio: which seems Glanvile so, the Act of suretiship. But in legall understanding it is taken, sins for the pledges which the demandant or plaintise sinds in such write as begin si A (i. querens) secerit resecurum de elamore suo prosequendo, &c. And these are called plegii de prosequendo, and the reason of these were, so, the answering of the Ling of the Americament if the demandant or plaintise were barred or nonsuit, ic. so cautious were the sounders of our law, that the Ling should ever be answered of such duties as belonged to him: but the Warit of the Ling, Auguen, or of an Ansant, shall not comprehend that Clause, is secrit te securu, &c, because they shall not in those cases be americed. But it is observable, that the tenant or defendant shall sinde no pledges: and yet if sudgement be given against him be shall be americed, it for melior est conditio possidentis & rei, quamactoris,

· Pledges may be found in the Chancery, or may be entred at any time banging arit or Bill by the discretion of the Justices, upon gaging beliverance by the

abowant he hall finde pledges de liberatione illa facienda.

4 There he also plegii de retorno habendo by the statute of W. 2. Df Pledges come Plevin, Replevyn, Replegiari, &c. See the statute of Marlebridge. ca.27. that traditus in ballium, replegiatus, & per plegios is all one and synonyma.

- When the desendant commeth in by Cap. 03 Origent he shall not since pledges but mainpasse.

f We that fueth by Bill hall finde pledges De prosequendo in fine billa, which

have been controverted in books.

The have hitherto spoken of pledges in a judiciall course. There be also be luntary pledges, as you may reade in Fleta, lib. 2. cap. 5. 32 E.3. monstransdes saitz. 179. 42 E.3. 11. 44 E.3. 21. 48 E.3. 20. 22 Eliz. Dier 270. F.N.B. 127.c.

Surety comprehendeth all the former. And note, there is a furety by the Tommon law, and furety by fratute. By the Common law, has in a Unit De securate inveniendance exeat regnum, &c. There is surety of the peace, and surety of the good behaviour de bono gestu. The surety of the peace cannot be broken without some Aa, as an Aftray, or Battery, or the like. But the surety De bono gestu consisteth chiesly, that a man bemean himself well in his port and k company, doing nothing that may be cause of the breach of the peace, or of putting of the people in sear or trouble; and that it both not consist in observation of things that concern not the peace, as in not well boing his art or occupation. Thus sat is the authority of the Book in 2 H. 7, by the resolution of all the Instices assembled for that purpose. But in mine opinion, the Reporter male segessit in the last words of the case.

At a generall Sellions holden at Bridgewater in the County of Sommerlet, Anno 28 Eliz. one William King with fureties was bound by recognitance to appear at the nert generall Sellions of the Peace in the same County, Er quod interim se bene gereret erga dictam Dominam Reginam, & cunctum populum sum. And after at the nert Sellions, William King appeared and was indiced to:

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flanderous words fpoken fince his binding, viz. for faying at one time to Edw. Kyrton, Efq; Thou art a Pelter, thou art a liar, and haft told my Lord lies, and I . And he was further indiced, that fince the faid will make thee a poor Recognilance, Claufum en juldam Johannis Wich, vi & armis fregit & intravir.& averia & catalla ipfius Johannis in clausu prædicto de pascent' illicite vexavit & chafiavit. And afterwards at another time he faid to the faid Kyrton, Thou are adrupken Knave : which Indiament was removed into the Kings Bench. And bereupon two questions were debated divers times both at the Barre and the Bench. First, admitting that all that is contained in the Indiament to be true. whether any therein was in judgement of law a breach of the faid Recognifance. The fecond, for how much the faid indiament was good in law. As to the first t was refolbed, that neither any of the woods, nor the trespalls, were any breach of the good behaviour, for that none of them did tend immediately to the breach of the peace, for though the faid words (especially thou art a lyar, &c. thou art a drunken Knave) are motibes and immediate provocations for breach of the peace. pttend they not immediately to the breach of the peace; as if William King had indenged Kyrron, og fent him a Challenge to fight with him, og had threatned Kynon to beat of wound him, of the like : there tend immediately to the breach of the peace, therefore are breaches of the Recognifance of the good behaviour. And this divertity was justly collected upon the coherence & context of the statute of 24 34 E.3 Cap.3. Entubereby Buffices of Peace are affigned for keeping of the Peace, to reffrain the Offenders, Rioters, sall other Barattogs, and to chaftile them according to their trefpalle coffence; and to inquire of Pillogs and Robbers, in the parts be: nd the feas, and be now come again, and go wanding fivil not labour, te, (And thus much for pumilhment of offences against the peace after they be done: now followeth an expecte authority given to the Justices, for prevention of fuch of fonces before they be done) viz. * And to take of all them that be not of good fame, (that is, that be defamed and justly suspected that they intend to break the water,) where they shall be found sufficient surety and mainprise of their good behaviour cowards the King and his people (which must crucerne the litings ware, as is also provided by the word subsequent) to the intent that the people be not by such Riotors troubled or indamaged, nor the peace blemished, nor Merchants nor other passing by the Highwayes, disturbed, not put in the perill that may happen of fuch offenders. For the trespalle, se. Although every torongfull trefpalle to quare vi & armis & contra pacem, pet thele topce and arms, or contra pacem implyed in law are not taken to be fuch as thall make a breach of the good behaviour; because they are trespasse upon the land or touching goods or thattels, and not the perfor of a man.

* This was the

f. ft ftatute that gave this expresse authority to Ju-

As to the fecond point it was holden, that the Indiament concerning the boids was boid and coram non judice, and good only for the trespasse, quare 11 E 4.10. clanform, &c. But if there be any inst cause of breach, he ought to have a Scire

fac upon the Recognisance.

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In an Account, if a Capias ad computand be awarded against the defendant, 31 H.6.26. and thereupon he is outlawed, and rendzeth himself to the pation of the Fleet, and Auditors be alligned to him, before whom they be at illue, and the Auditors hing the Record into the Common Place, and the defendant found furety in 200 li. to appeare in proper person every day pendence placito; and if the titue Palle against him, that he rendzeth himselfe to paison.

"A fine fur conusance de droit was levied to an Infant, and because the Infant Register 201 b. out to pay the fine to the Bing, he found securitatem de fine solvendo.

There is also a wartt De securitate pacis. & de bene gerendo.

In homine replegiando the defendant about for that the plaintife is his vilwin regardant. The plaintife said that he is free, and thereupon they were at Mue, the plaintife praped that he might gage beliverance. And it was awarded 66 E.48. that he thould have deliverance of his goods, and finde no furety that the about. 12 E. 4.4.2. ant hould have the goods again if it were found for him. But note when the 13 H.7.17.2. abolvant be at titue upon the villenage, then the plaintife thall find furcty to fue 23 H.7.3. cum effectu. Surety

a 45 E.3. Surety Nosa. F.N.B.79 8. 2 H.7.1.4 &c. 36 H.6.23. 3 H.4.9. 5 H.7.3.4.

See F. N. B. 151.9

Surery: By statutes: See the statute of VV. 1. cap. 20. De malefactoribus in parcis in the Second part of the Institutes in the exposition of the same; the statute of Gloc. cap. 4. and VV. 2. cap. 21. for simbling of surery in a Cessavir. See also the Second part of the Institutes in the exposition thereof.

The Catute of W.2.c.4. Et statut, de desensione Juris, An.20 E.1. of sinding of surety by tenant by Resceipt. See the Second part of the Institutes the exposition of the same. And many other whereof we need not to make mention; only this is observable; that when any statute both require pledges or surety to be sound, they ought to be sufficient, so, insufficient pledges are no pledges in judgement of law; and surety cannot be ex vi cermini unlesse it be sufficient.

W.z.ca.29.Mag, Cart.cap.26. * Reg. 133. 134. 28 E 3.ca.9. Stant, Pl. Cor. 77 G. See Hil.32 E.r. Coram rege Rot. 71. & 79. Regist. 268. b. F.N.B. 250. 2. Brackli 3, £154. 28 E.3.cap.9.

Regist. 133 b. F.N.B. 250 k.l. & 251.a.b.c.

Regist.79. F. N.B. 250.d.f.i. See Bract.li.3. 121.154.Fleta li.2.c2.2.

Brack.li.3.fo.145. Britton to 49. Fleta li.1.ca.40. Mir. ot ca.2. §.11. la appeal de imprisonment. Cap. in Withernam.

34 H 8.cap. 14. This is expounded to be reddendo fingula fingulis respective. Vide 8 E.4.18.

a Vid. Dier 8 El.
2533154 upon another branch
of this Act.
b11 H. 7.20. per
Keble Br. Judg. 8.
to b: understood
of the Kings
Bench.
14 H. 7.15;b.Per
Mordaunt.

It appeareth by VV. 2, cap. 29, that the " Wirtt De odio & atia concerning the bailment of prisoners is grounded upon Magna Carta. And it is belden by some, that Whit is not now in use, but is taken away by the Catute of 28E. But this Warit is revived again by the fatute of 42 E.3. cap.1. whereby it is enacted that if any statute be made against Magna Carra, 02 Carra de Foresta, # is enaced to be boid. See more of this matter in the Second part of the Inflittee, Mag. Cart, cap. 26. which were unmeceffary here to be rehearfed. This Witt De odio & aria is omitted by Piczh.in his N.B. Concerning the Warit De manucaptione, one kind thereof directed to the Sherif is a wait grounded upon, and my bearling the fatute of W.i. cap. 15. and how that before him by a certain in quilition ef effice A B stanbeth inditted de quodam latrocinio cujusdam equi, Sc. Bow in as muth, as by the ftatute of 28 E,3. he cannot take fuch inquifitions by force of any writ or Commission, therefore that wit De manucaptione centeth. But the wait of manucaptione may be directed to other Justices. as to the Juffices of the Forest, Juffices of Peace and to other: for the flating of 28 E. . ertends onle to Sherifs, and to Sherifs only upon taking of inquit. tions. But a writ of manucaptione may in other cases be directed to the she rif. Videthe Catute of 4.E.3.ca.2. for the Court of the Parthallea, F.N.B. 15.1 For the watt of homine replegiand', feethe Register fo. 133, F. N. B. 66, E. Hill 43 E.3. Coram rege Rot. 110. Suffex, Mich. 5 H.4. Rot. 26. Devon' per breve Regis in duobus Com' William Scuttes cale, 11 H. 4. 15. F. N. B. 68,4

Do odious was unjust imprisonment, or unjust determing of any freeman in prison, as in ancient time there lay a writ De pace & imprisonamento, &c. ubi liber homo, &c. uno modo proprer injustam captionem, & alio modo proprer injustam determionem, &c. And there you may read the form of the writ of Appeal, De pace & imprisonamento, which we have the rather remembred, that it may be observed what severall remedies the law hath allowed for the reliefand ease of the poor prisoner. But the readiest way of all is by Habeas Corpus in the Term time, or in the Macation out of the Chancery, as you may read at large in the Second part of the Institutes, Mag. Carta cap. 29. and statut, de Gloc, c.9, and the Cryosition upon the same.

The Clerk of the Crown. Clerk of the Peace, and Clerks of Adde thall certifie briefly a transcript of such Attainver, Dutlawry or conviction as is had so any kind of felony before Institutes of Oler & Terminer. Austices of Gaol delivery, and Institutes of Peace before the king in his Bench, there to be a remain of Record, to. See the statute, a very necessary law for the plea of auterfoir attaint, or convict for outling of Clergy, ac. and for escheats and sorfeitures to the living.

b For the better underkanding of this Ac of Parliament, it is to be underkand, that such Attainders of Dutlative and conditions of selong before any of the Justices named in this Ac, as are certified, or delivered into the kings Bench, are under the custody of the Clerk of the Crown of that Court, and so that cause he is named in this Ac.

Bench.

14 H.7. 15,b.Per

Instites of Antie, Gaol delivery, and of Oier and Terminer, shall send all their records and processes determined, and put in execution to the Exchequer at Michelle bery year once to be delivered there, and the Excasurer and Chamberlains, the

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wall keep them in the treasury as the manner is, so that the Justices always doe first take out the estreats of the faid records and processes against them to fend to the Erchequer, as they were wont before.

By the flatute of 11 H.4. ca.3. Justices alligned (id eft , Justices of Affile) 11 H.4.cap 3. hall cause to be delivered into the Bings treatury all the records of Affiles, 13 H.4.error 91. Mordanceltor, and of certifications before them determined every fecond year.

All Indiaments and Prefentments in the Sherifs Turn, or law days thall be ntivered to the Juftices of Peace of the fame County, at their next Sellions of peace to award procedle, ac.

After the murder of manuaughter found befoze the Cozoners they Chall deli-

per their inquititions afoze the Justices of the next Gaol delivery.

I can pperson be murdeed in the day, and the murderer escape untaken, the 3 H 7.ca.1. Township shall be amercied, and the Cozoner hath power to enquire thereof upon view of the body, and the Justices of Peace have power to inquire of fuch e-

frames, and to certifie afoze the laing in his Bench.

And (that we may fay somewhat of every thing) Foral much as the charge to be given at the Sellions of the peace conlitteth on two parts , Laws Ecclefiaftiall for the peace of the Thurch, and laws Tivill or Temporall for the peace of the Land, it thall be very fit to lay, as a foundation of the charge, that excellent law W. 1. An. 3 E. 1. established by Authority of Parliament, which we have translated into Latin. cap.1: Imprimis Rex vult, & pracipit quod Pax Sacrolanca Ecclefix, & terra fo- Pax Feelefix. lide custodiatur & conservetur in omnibus, quodque Justitia singulis, tam pau- Justitia pacis peribus, quam divicibus administretur, nulla habita personarum ratione.

First of all, the King willeth and commandeth that the peace of holy Thurch, and of the Land be well kept and maintained in all points, and that common right (i. justice) be done to all, as well poor as rich, without respect of persons.

Bereupon the charge to confift upon two parts. 1. Df laivs Ecclefiatticall, and 2. Of laws Civill, or Temporall, with an erhortation to doe justice.

Danother Ariome of Painciple of the law may be the foundation of the charge. Imprimis interest reipublicator pax in regno conservetur, & quaeunque paci adversentur provide declinentur.

It is most necessary in a Common wealth to provide, that tranquillity and repealed, yet the peace be continued in the Realm, and that all things being contrary thereunto

may by forelight be eschewed.

D; that of 32 H.8. There is nothing within this Realm that conferbeth the fubjects in more quietnelle, reft, peace, and good concord, then the due administra= * 32 H.8. (2.9. tion of his lains.

Di the like, fee the Third part of the Inflitutes, in Epilogo.

3 E.4.cap.3. Vid.4 E.4.f.31. 8 E.4.fo 5.

3 H.7.c2.1. Lib.Intr.Raft 43.

mater & nutrix.

I Mar.cap.II. 3 & 4 E.6 ca.5. Though the body of their Acts b: Axiome rehearled in the Preamble Chall continue for

CAP. XXXII.

A Court of Inquiry of the defaults of the Iu. stices of Peace, Justices of Assis, Sherifs, and Under-sherifs, touching the execution of the statute of 13 H. 4. Cap.7.

Concerning Riots, Assemblies, and Routs.

2 H.5.cap.8. Sec 19.H.7.c.13. Dis Court is raised by the statute of 2 H.5, and is a Court only of Inquiry, and to certific the inquests incontinent into the Chancery, as by the said statute more at large appeareth.

CAP. XXXIII.

Iustices in Eire.

See the 2.Part of the Inft.W.1. cap.27. Bracton lib.3. fo.116. Britton fo.r. 2 E.3.fo.27. Kelw.fo.143.

Regist. F.N.B. 243.k.

14 H.7. 29.

15 H.7.5.

Dep were originally instituted for the good rule of the subjects, and so, the ease of the Countries, and that such as had Franchises might claims them.

They were called Justiciarii in Itinere, o) Itinerantes, in respect of other 30. Attes that were residentes. In the black book in the Exchequer, cap. 8, they are called Justiciarii deambulantes, & perlustrantes. See Vet. Mag. Cart. 2 part. fo.

72. Artic', & facramenta in Itinere.

Their Authority was by the Kings writ in nature of a Commission, they had jurisdiction of all Pleas of the Crown, and of all actions reall, perfonall, and mirt: they road from feven years to feven years (but now by the statute of 27 H. 8. ca. 24. all Juftices in Eire muft be by Letters Patents under the Great Seal.) In what County soever they came, all other Courts during the Eire ceased, and all those pleas in that County, or rising there before any other, the Justices in Eire might proceed upon as the others might have done. For erample: A wait was directed to the Justices of the Common Pleas to adjoun, and fend all the pleas of that County which were in the Court of Common Pleas before the Justices in Eire to be determined before them, to. And if judge ment had been within that County, the Justices in Eire might award execution without a Scire fac'. See the First part of the Institutes, Sect. 514. and read the ancient books and other Authorities there quoted for their antiquity and juristidiation, and the causes wherefore they banished away. But the other Justices of Eire, viz. of the Fozelf, continue to this day according to their original in-Mitution. See the Chapter of the Court of the Forest. See also the Second part of the Institutes, Marlbridge 24,25,27. W. 1, cap,18. & W.2, cap,10, and the Exposition of every of them.

What Franchifes and liberties ought to be claimed befoge Juffices in Eire,

fee lib.9. fol. 24. the cafe of the Abbot of scrata Marcella.

The stile of their Court was, Placita de Juratis & Affifis & Coron. de Itinere Iohannis de Vallibus & sociorum Iustic' Itiner' apud Ockham in com' Rutlandinicrastino Epiphaniæ Domini, Anno regni regis Edw. 14.

These Justices in Eire did hold their Courts, as hath been said, from seven years

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pears to seven years, and first they began with Pleas of the Crown, for faith Bracton, Imprimis incipere debent de Placitis Corona, in quibns terminantur Bract.lib.z.fo. actiones criminales tam majores quam minores. And one could not be inote 115.b.116.b. ned for any thing, concerning the Pleas of the Crown, done before the last Eire: Fletali 2.cap.19. for to it appeareth by Bracton, Non erit quarendum de Placitis illis Corona qua emerserunt ante aliud iter Justiciariorum, & quæ coram eis proposita non suerunt. And by Fleta, Excapitalis de veteribus Placieis Corona alias prasentatis Vide postea Ca. & nondum terminatis, solet exceptio quibusdam indicatis oriri, quod de novo 60.01 Pij owders. indicamento de fact'ante ultimum iter imposito non tenetur respondere; & si non fit allocabilis, sequitur quod Juracores hundredi puniendi fune de concelamento, vel de perjurio convincendi.

And it were to be withen that in criminall causes at the Kings suit, there were a limitation of time, specially in cases concerning the life of man. The Common law in Appeals at the fuit of the party bath in those cases limited a time, viz Abat they must be brought within the year and the day after the offence committed: and the reason thereof was, that the cause might be treed, whites it was fresh

in memory, and that fuch as could tellife were living.

Vid. Hil. 15 E.1. in Banco Rot. 56. they could adjoin into another County. The Justices in Eiro might inquire of the deeds of Justices of Gaol delivery. Rot. Par. 20 E. z. Bracton faith, Et fi post intervallum accusare velit, non erit de jure audiendus, Rot. 6. nisi docere potest se fuisse justis rationibus impeditum. And Bracon atto satth, that after the charge given the Justices in Eire, debent transferre fe in locum ferretum, & convocatis ad se quatuor, vel sex, vel pluribus de majoribus de com' midicuntur Busones com'ad quorum natum dependent vota aliorum quali- susones free terà dio rege & concilio suo sit provisum, quod omnes tam milites quam alii Bursones, of the qui funt : 15 annorum & amplius jurare debent, &c.

verf.finem.

French word Bourson: for as it

is in the proverb, He that beareth the purse ruleth the rooft, which agreeth with Bractons description here, Adquo-rum nutum dependent vota aliorum. So vulgarly called, which also Bracton insmuseth, when he saith, Qui dicuntur bufones. a It is mil printed, and should be 12 annorum, 2 for, 5. See the 2. part of the Inft, Mag. Car. ca.7. & 35.

So great was the authority of Justices in Eire, that if they came into the Br. Jurisd. 116. County where the Justices of the Court of Common Pleas lat, the jurisdiction 27 aff. 1. F. N.B. of that Court during the Eire ceased, but they peelded to the Bings Bench.

See Cap. Itineris, Vet. Mag. Cart. part. 1 . fo. 150, 151.&c.

bee Hovenden, Anno Dai. 1176. Vid. Hil. 13 R. 2. pl. 2. Df proceedings before them.

Rex Insticiariis suis prox' Itinerantibus in com. N. Salutem. Quia Regist. 19.b. per * commune concilium regni nostri Anglia provisum est, quod quilibet liber homo libere possit facere Attornatum ad libertates suas vendican- fecis a good exdas, exigendas, prosequendas, & defendendas, Vobis mandamus, quod At- position of this tornat' quem A per Literas suas Patentes suo loco attornare voluerit, ad flatute.
See the 2.part of libertates suas vendicandas, exigendas, prosequendas, & defendendas coram the Infl.W.2. vobis in Itinere vestro in com' pradicto, loco ipsius A sine difficultate ad cap.10. hoc recipiatis, &c.

Dee also another witt in the Register, Ubi supra, De clamore admittend' in Itinere,&c.

Fleta li. 1.ca. 10. S. Ex capitulis verf. finem.

* Viz.W.2 C.10.

CAP. XXXIV.

The Court of Justices of Trailbaston.

These Justices sat by source of the kings Commission of Oier and Terminer grounded, as some hold, upon an Dedinance made by king E. 1. and the Loeds at a Parliament holden in Anno 33 E. 1. so the hasty proceeding. And therefore they were called Justices of Arailbasson, because they proceeded as speedily as one might draw, or trail a staffe. They say upon the said Dedinance in the same year, viz. 33 E. 1. a Commission of Oier and Terminer Vocat' Trailebasson secundum ordinationem inde sact' in Parliaments de Anno 33 E. 1. By this it appeareth, as some have conceived, that this Commission was builded upon an Dedinance in Parliament, and not upon an Act of Parliament.

Others say that this Commission was grounded upon an Act of Parliament in Anno 33 E.r. intituled Statutum quod vocatur Ragman de Justiciariis assignatis. See the statute, and that the Dedinance mentioned in the Commission of 33 E.r. is the statute Ragman, statutes being often called by the name of Dedinances, soe every statute is an Dedinance, sed non èconverso.

But let us now confider what light our books have given us, the flatute

being somewhat obscure and bark.

In Trin. 2 E.3. we read this cafe. William de B. fued a wait of Errorre furnable in the Kings Bench upon a judgement given in a plea of land at the futt of John Hodey, which was pleaded by bill before Justices of Traili batton, where because the Austices of Arailbatton did send only the record of the plea, they were commanded to fend the transcript of their Commission, and the bill also with the pannell, the which they did, and again the recordalso. In which case you may observe these Five Conclusions. First, it was alligned for error, that John Hodey made his plaint of certain land against William de B. being prefent in Court before the Buffices of Trailbaffon, and he was put to answer without making of processe against him, and therefore they erred in receiving the plea without processe, sc. fed non allocatur. Secondly, for the Buffices of Trailbafton be in their cafe as Buffices in Gire; and in Gire when the party puts in his bill against another which is prefent in Court, the Justises in Gire ought to receive it. Thirdly, another erroz was assigned, that it appeared by the record, that presently the Justices of Trailbaston took an inquett de circumstantibus, which came not in by processe to give their verdid, and also it appeared by the record, that the Twelve gave their verdid, saper facramentum fuum, without faying de confensu partium; fed non allocatur. For in Trailbalton and in Cire certain men are made to come by inhom thole Justices doe inquire ex officio, that is, without processe, subcreunto the parties which have pleaded to iffue agree to be treed by them, the Courterreth not if they take an Enquest of them, and it is not found of record, that VVilliam de B. did difassent: and as to the other point, the Court thall intend an assent where there appeareth no difattent. Fourthly, the errors assigned being no erross, the Court did fearch for erross, and to affirm the judgment or to reverse it. And the Court did find in the first record which was fent, that William de B. dicit quod in nullo est inde culpabilis, & de hoc ponit se super parriam, where Iohn de Hodey which was Plaintif Did not joyn with him, & pradictus querens

33 E. r. in Dorf. Pat.parte 1.

Vet.Mag.Cart. 2 parts fo.28.

2 E.3.fo.27.

smiliter, which joyning was in the fecond record certified; but for that, that recold came in without warrant, and the first record certified is the record in late. thereupon the former judgement was reverted. Fifthly, that no error was aligned, that the Justices of Trailebalton had no lawfull jurisdiction, but a Writ of Erroz brought upon their Judgement, whereby, and by all the context of this cafe their jurifolition was affirmed, the Judices of the lainus Bench babing , as is afozefaid, a Transcript of their Commission. Also thep had jurifdiction in case of indiament of death, and to attoteed, but Appeals of felo. 2 E.3.28. no were excepted in the faid fatute.

Vide Dors. Pat. April 14 E.3. part 3. m.8. & 2. A Commillion of Trailbe 14 E.3. non was granted to Robert Parning Treaturer and others in London, Piddle:

fer and Sourcep, and like Committions were granted in other Comities.

True True

A Betition was exhibited by the Commons in full Barliament, who praved Rot Parl 1 R.2. that no manner of Cire of Trailbacton might be holben buring the warres . ot 101.

20 pears, ec. but it was not granted.

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But Pracipitatio eft Noverca Jufticia: and both in refpect of the precipitation and of fome reference to the next Parliament by the fatute of Ragman, this Commission wholly long since vanished, and is left out of the Register as not to be put in execution. But the Commission of Dier and Terminer there remaineth as necessary and useful for the punishment of hourible and enormious of. fences. Seebefore the Chapter of Dier and Terminer.

after the production of the right and several

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CAP. XXXV.

The Court of VV ards and Liveries raised by Authority of Parliament.

The statute of 32 H.8.cap.46.

¶ The Court of the Kings Wards.

A Court of Record.

By the statute of 33 H.8.cap.22. the office of the Liveries is annexed to the Court of the

First, the King our said Soveraigne Lord by the authority aforesaid, Ordaineth, maketh, establisheth, and erecteth a certaine Court commonly to be called for ever The Court of the Kings Wards: which Court by authority aforesaid continually and for ever shall be a Court of Record, and shall have one Seale to be graven and made after such form, fashion, and manner, as shall be appointed by the Kings Highnesse, and shall remaine and be ordered, as hereafter shall be declared.

Also be it enacted by authority aforesaid, that all Wards which the

Kings Highnesse now is, or hereaster shall be intituled to have, with

nexed to the Court of Wards. So as now it is in the Court of Wards and Liveries,

See the first part of the Institutes. Sect.441. All Wards. Mannors, Lands, &c.

their Mannors, Lands, Tenements, Rents, Remainders, Reversions, Services, and all other Hereditaments whatsoever they be, as well in possession as reversion, and all Revenues, Issues, and Profits of the same, and every part thereof, for the time the same shall be, or ought to be in the Kings possession, shall be in the order, survey, and governance of

the faid Court, and the Ministers of the same, in manner and forme, as by this Act is declared and limited.

In the order, furvey, &c.

Proces.

Duchy Chamber.

In any wife touching or concerning, &c.

Debt.

Artend.

By the faid Act of 33 H. 8. the Surveyour is added, and to take place before the Attorney. Also that the said Master of the Wards for the time being shall have full power and authority to award under the Seale to be appointed to the said Court in the Kings name such Process and Precepts with reasonable pains to be therein limited, as be now commonly used in the Court of the Kings Duchy Chamber of Lancaster being at Westm. against every person or persons whatsoever they be, for and concerning the interest, right and title of the Kings Majesty, his Heirs and Successors, of in or for any Wards Lands, Tenements, Rents, Account, Receit, Services, or other cause in any wise touching or concerning any thing appointed by the order of the said Court, or any part thereof, for and on the behalfe of our said Soveraigne Lord the King, or toor for any debt, rising and growing by occasion of the same.

Also be it enacted by the authority aforesaid, that the said Attomy, Receiver Generall, and Auditors shall diligently from time to time attend upon the said Maister in the said Court for the hearing and ordering of matters and causes in the same Court for the time of four Terms in the year usually kept for the law at Westm. and procure with all diligence, that all rents, fermes, profits, casualties, improvements, and other emoluments of the Wards mariages, Ideots, and all Mannors, Lands, Tenements, and Hereditaments being in the survey and governance of the said Court, shall be truly and justly paid, and answered to the said Receiver Generall of the said Court to the use of the Kings Highnesse without concealing any part thereof. And shall also cause and procure Processe to be made against such as shall be indebted

Indebted.

to the Kings Highnesse and their sureties of and for any part thereof, from time to time, as the time and case shall require without any delay.

Also be it enacted by the authority aforesaid, that all manner of Proces that shall be made out of the Kings Exchequer to or against any person or persons for any Ferme, Rents, Issues or profits concerning the any Ward, &c. premises or any part thereof, or any other thing limited in this Act to be in the survey, order, and governance of the said Court, and the ministers thereof, shall be clearly void and of none effect to all intents and

purpofes.

Also be it enacted by the authority aforesaid, that the said Master by the advice of the faid Attorny, Receiver Generall, and Auditors, or three of them, whereof the said Master to be one of them, shall have authority by this Act to survey all the Kings Widows, and to treat, Widowes, commune, and conclude as well with all and every of the Kings Widows that now be, or hereafter shall be, and that have married themselves without the Kings license, or that hereafter shall happen to marry themselves without the Kings license, fortheir reasonable fines to bemade to the Kings use, and to tax and affesse the same by their difcretion according to the statute of Prarogativa Regis: the same fines to be paid to the Receiver Generall of the Wards lands, as the same may

appear yearly in his account.

Also be it enacted by the authority aforesaid, that the said Master by the advice of the faid Attorny, Receiver Generall and Auditors, or three of them, shall have authority by this Act to survey, govern and orderall and fingular Ideots and naturall Fools now being in the Kings Ideots. hands, or that hereafter shall come and be in the Kings hands. And Naturall Fools. also to survey and order all the Mannors, Lands, Tenements, and other Hereditaments what soever, now being in the Kings hands, or in the hands of any other person or persons to their uses, or to the use of any of them, that hereafter shall come and be in the Kings hands, his Heirs and Successors in the right of any of them by reason of his Graces prerogative Royall: And also by the advice of the said Attorny, Receiver Generall, and Auditors, or three or two of them, to let and fet, the To ke and fet. Mannors, Lands, and Tenements to the Kings use for the time of the Kings interest for such rent and fine, as by their discretion shall be thought convenient; the finding and keeping of the faid persons their Wives and Children, and the reparations of their houses and lands alwayes to be confidered in the doing thereof; the same rents and fines reserved to the Kings Grace to be paid alwayes to the hands of the Receiver Generall of the Wards lands for the time being, as the same may appeare in his account, and be recorded in the Court of Wards.

And also be it enacted by the authority aforesaid, that the said Master for the time being shall have power and authority to take Recognisances of all and every person and persons that shall be called into the Court of Wards and Liveries to answer to any matter alledged against them in the faid Court, to make their daily appearance in the faid Court, to answer to such matters as to them then and there from time to time shall be alledged. And that all such Recognisances of what fumme soever they be, shall be as good and effectuall in the law to all intents and purpofes, as Recognisances taken in the Kings High Court

the Exchequerfor or concerning

Called by Proces.

To moderate Recognisances. of Chancery, or elsewhere before any Judge of Record within this Realm. And that the faid Master for the time being with the advice of the Court, or of such member of the same as then shall be present, so that they be two beside the said Master, shall have full power and authority to moderate fuch Recognisances as be or shall be there forfeited. and to fet fines for the fame to the Kings use under the fummes contained in the faid Recognifances, the faid fines to be levied by like Proces of Scire facias, as by the statute made in the 27 yeare of our Soveraigne Lord the Kings reigne is given to the Chancelour of the Count of Augmentations of the Revenues of his Graces Crown. And that the faid Master for the time being with the advice aforesaid shall have power and authority to commit to ward any person or persons for his or their disobedience, contempt, or other offence made, or to be made triable within the Kings Court of the Wards and Liveries, and upon the faid matters ordered or decreed there, to deliver them from prison, and to cancell and make void all Recognisances and Obligations taken or hereafter to be taken in the fame Court to the Kings use when and as often as the faid Master, with the advice of the faid Court or three of them, shall see and perceive the matters and causes, forthe which any such Recognisances or Obligations hath or hereaftershall happen to be taken, to be finished and ended, and the Kings Grace his Heirs and Successors, or the party thereupon satisfied, without any other warrant for the same.

The Anthority of the Courts of Exchequer, Wards and Duchy, A Claufe of the flatute of 33 H.8 Affigned.

And also shall have full power and authority to hear and determine all and all manner of Debts, Detinues, Trespasses, Accounts, Reckonings, Wasts, Deceipts, Negligences, Defaults, Contempts, Complaints, Riots, Quarrels, Suits, Strifes, Controversies, Forfeitures, Offences, and other things what soever they shall be, which shall hereafter grow, be moved, itirred, procured, purfued, or arife in, for, or upon any matter, cause, or other thing * assigned, committed, or appointed to the feverall directions, orders, and governances of the same Courts, or any of them, or for or upon any manner of thing or things which may or shall touch or in any wife concerne the same, wherein the King shall be only party. And also all manner of States for rearme of years between party and party concerning the premises, and to correct and punish by their discretions all and every person and persons which before them shall be convicted of any of the premises according to the nature, quality, or quantity of his or their offence or offences, caufe or causes, matter, or matters (all and all manner of Treasons, Murders, Felonies, Estates, Rights, Titles, and interests as well of inheritance as freehold, other then joynctures for tearm of life, only excepted

and alwayes forepriled.)

Before two defrend to the feverall parts and branches of these Ads, it shall be expedient for advancement of truth to handle and clear two Auctions. First, when Wards became one to the kings of England, by what title, and upon what reason. Secondly, toho had the charge of the Kings Mards; how they were disposed of, and in what Court this revenue was answered before the reign of H.8.

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The first contains three things. Time, Title, and Taufe. And in all thefe three Polydor, and fuch as follow him, to erre. For Polydor faith that Henricus 3. Polydor lib. 16. Anno Domini 1219. qui avitum regnum civili bello, ac dissensionibus vasta- pag. 188. tum, opibus spoliatum, atque prope confectum paulo ante adeptus erat, cum rei domeftica inopia pressus, non posset sine auxilio suorum, Asiaticum bellum juvare, vitamque regiam decenter degere, principes soluto prius tributo, pro co bello gerendo postea excogitato novo vectigalis genere, ut regem sum ea in- Excogitato novo opia levarent, a ultro concesserunt, ut quoties quispiam eorum, qui possessiones vectigalis genere haberent b quarum Rex effet Dominus, ante moreretur quam liberi quos fecisset baredes vigesimum alterum agerent annu, tum eatenus tam ipse hares b Quarum rex anam patrimonium in potestate atque tutela regis foret, & ille patrimonii hujusmodi proventus caperet, quoad hares ad eam atatem perveniret: quia and Anglos more majorum pervetusto conservandarum facultatum causa, filiu mas natu grandior fit Jolus hares, vel filia si mares liberi nulli sint. Egit Rex gratias omnibus generatim pro munere, ac ut ne id humanitatis in oblivionem iret, deinceps istiusmodi nobilium haredam tutelas ut rem sibi valde milem accuratissime suscepit. Sed illud beneficium nequaquam ipsi nobilitati postremo bono fuit, quando cateri reges qui secuti sunt, non habita ratione, quod à principibus olim in Henricum duntaxat collocatum fuisset, ut qui pauper effet decentius personam regiam per illud sustineret, sibi etiam perpetuatum voluerunt. Quid, quod ita res cura omnibus fuit, ut non modo reges, sed reliqui locorum domini in hareditates nobilium defunctorum eodem modoinvaserint, id quod etiam nunc fit, & lege certa observatur. Vnum istud institutu est tande aliquando corrigendu, quippe quod quantu uni vel alteri commodi, tantu aliis incommodi affert : sane ita usu venit, ut populoru quibus bæreditates veniunt tutula sape à locoru dominis ad tempus fisut dictu est, illoru tmoribus per auctionem vendantur, que sic facto lucro, ab ea educandorum puerorum cura vacui fint, & qui emunt, emunt autem tam nobiles, qua homines vovi, si modo plus dederint, ea prasertim de causa redimant, ut pupillos nobiliu suis liberis matrimonio conjungent. Idq. sapisime faciunt, antequa illi pubescant, quo simul vivendo, cum primum per etatem liceat, urgente voluptatumtitillatione invicem commisceantur, ut ne postea, cum adoleverint, jam mutui polluti nuptias repudiare queant, qui sic sese ab ineunte atate libidinibus dedecorantes interdum non homines, sed ob virium infirmitatem plane homunciones gignunt à majoribus degenerantes. Atqui nobilitas cum primis eo damnum facit longe ingentissimum quod homines humili loco nati per ejusmodi connubia sanguinem cum ea socient, contaminentque in dies singulos ejus vetustum genus, & pupilli ipsi à sinu matrum per emptionem erepti parum interdum honestis in aliena domo instituantur. Oritur vel hinc res alia indigna de qua nunc tacere libet, istorum enim conjugum gratia admodum modica aliquoties existit cum ante atatem, & aliquando contra voluntatem nobiles famina, virique plebeis copulati perraro inter se ament. Pratereo & illud, quantum patrimonia nobilium, caufa hujusce tutela lacerentur à novis possessionibus; qui suis avare commoditatibus servientes pecus omne non modo tondent, sed deglubunt egregie. Atque hoc est principum munus, quod regias opes maxime adauxit.

effec Domines.

Perein Polydor hath erred in all three. For first, where he affirmeth for the time, that this Novum vectigalis genus was excogitatum, and granted to king Henry the third Anno Domini 1219. which was in the third year of his reigne; Glanvil who wrote in the reign of H.2. treateth of Warrothips due to the King Lb7.cap.9,10.

And Ockham
who wrote tempore H. z. treateth
alfo of Wardthips & Liveries.

Matth. Paris,

and other Lords: to the king in these words. Norandum tamen quod si quis in capite tenere debet, tunc ejus custodia ad dominum regem plene pertinet, sive alios dominos habere debeat sive non, quia dominus rex nullum potest habere parem, multo minus seniorem, &c. And he treateth ubi sopra of Exarchips then one, (which holdeth law till this day) and speaketh nothing of the beginning of them.

Ising John in the seventeensh year of his reign made a great Charter, and granted Concilio Baronum, quod custos tex haredis qui infra attactm suer non capiat de terra haredis nisi rationabiles exitus, & rationabiles consuerudines, & rationabilia servitia. & hac sine destructione & vasto hominum vel rerum. Ersi nos commisserimus custodiam alicui talis terra vicicomiti vel alicui alii, qui de exitib terra illius nobis debent respondere, & ille destructionem de custodia secrit vel vastum, nos ab illo capiemus emendam, & terra committatur duobus legalibus & discretis hominibus de seudo illo, qui similiter nobis respondeant, sicut pradictum est. Custos autem quamdiu custodiam tex habuerit, sustente domos, parcos, vivaria, stagna, molendina, & catera ad illam terram pertinentia de exitibus terra ejusdem. Et reddat haredi, cum ad plenam atatem petvenerit, terram sinam toram instauratam de carucis, & omnibus aliis rebus, ad minus secundam quod illa recepit.

2. Where Polydor saith, Virro concesserum ut quoties, &c. he affirmeth that it came from the grant of the subject to the king. The truth is, that all Tenures by knights service, which since the Conquest draweth ward and martage (for reliefe was due before) were either created and reserved by the king, or before of 18 E. 1. Quia emptores terrarum by the subjects of the Realm. It by the king, it is either of the person of the king, or de corona, which we call in Capite, or of some Bonour or Pannor. If by a subject, either of his person or of an Honor or Pannor. And all these tenures have been created according to this rule, Cujus est dare, eius est disponere. And all the lands in England originally moved from

the Bing, and are holden of him mediately or immediately.

3. He utterly mittaketh the end of the creation of these tenures by knights service, which were exiginally created for the defence of the Realm by his owns subjects, which is more safe, then to trust to foreiners. But hereof you may reade at large in Littleton, Sect. 95, 96, & 103. & Li. Rub. Mayuk enim princeps domes

flicos, quam stipendiarios bellicis apponere casibus.

This Tenure which now is called Escuage, or Servicium Scuri, was of ancient time named expedicio hominum cum scuris, as you may reade in the Charter of king Kenulphus who Anno Domini 821 & regni su 25 granted to the Abbot of Abbandon many Pannors and Lands, and reserved quod expedicionem duodecim virorum cum tantis scutis exerceant, Antiquos pontes, & arces renovent, &c. Of all other services and Charges he and his successors incredischarged.

In nomine excelsi Tonantis, cujus nutn & miseratione à pio patre praditus, ego Ethelred Rex totius Insula cum consensu & licentia Optimatum meorum alsorumque meorum sidelium dabo, & libenti animo concedo Closic, quandam ruris particulam, hoc est, 20 mansos in loco quem ruricola vocitant at yceantun in hareditatem perpetuam, & semper liber permaneat notis & ignotis, magnis & modicis, ad habend' & tradend' qualicung, voluerit relinquat ab omni tributo & servicio regali, nisi constructione pontis, et arcis adisticatione, & hostium expeditione. Actum est autem hoc mea concessionis donum Anno Dominica Incarnationis 1001. & c.

In the Fook of Domesday you shall finde it thus recorded. Sudrie. Episcopus Baioc'

Ille qui tener de Wodardo reddit ei 50 s. & servicium unius militis, and in dis bers other places. And in Domesoap mention is often made of Drenches of Drenges which is as much to sap as Tenentes per servicium militare.

s pare of the In-

Polydor faith, that this Novum vettigalis genus was granted to the King. I part of the Inft. Scct. 1.

Britten fo.162.b

The Charter of King Kenulfus, Anno Dom.821.
The like Charter of King Ethetred to a Knight called Athelweg, Anno Dom.995.

The Charter of King Ethelred.
1001.
Bracton lib.2.
fo.36.37,&c.
1 part of the Inflicted Sect.103
V b Chivaler.
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many others of this kind might be cited to prove that priment Antiquity over movided by referbation of tenure (amongst other things) for the befence of the Realm against the Invasion of Enemies.

All our ancient Authors treat hereof. Dee the Firft part of the Inflitutes, Glanv.1.7.c.9.10. sed . 103. and fee the Brand Cuftumer of Pormandy Cap. 33.&c. fo.49.

you have heard before de Regali fervicio, before the Conquett, but that rerale fervicium (which was Unight fervice) diew unto it Relief, but neither Bracton lib. 2. mardhip of the body or of the land, as hath been faid. It is true that the Con. fo. 26.2.85. enerour in respect of that royall service as a tadge of the Conquest took the Britton fo. 161. marbibip of the land and the mariage of the heirs within age of fuch tenants, but this extended not to the tenures of the subjects by Bnights fervice, as it appeareth by Bracton: Dicitur Regale servicium, quia spectat ad dominum regem, Bract. 1.2.fo.36, & non alium, & secundum quod in Conquestu fuit adinventum; & hujufmodi tibi supra. fervicia persolvuntur ratione tenementorum,& non personarum, quia extenementis proveniunt, ut si dicatur faciendo inde forinsecum servicium, vel regale fervicium, five fervicium domini regis,&c. So as the Conquerour probibed for himself, but other Lords at the first by speciall referbation since the Conquest movided upon gift of lands for themselves: Regisad exemplum torus componitur orbis, wherein that which we had from the Conquerour we freely confesse, mo that which the Pormans had from us, we have truly related in other places.

The good bing H. 1. fon of the Conquerour finding that the wardibip of the Bractons meanbody and lands of his Tenants by knight fervice eraced by his Father was ing. both grievous and unjust, by his great Tharter Anno primo regnitui, reciting Quod regnum fuum oppressum erat injustis exactionibus,&c. (and particularly tempore patris fui) bid grant (among it other things) Quod fi uxor cum liberis remanserit, dotem suam & maritagium habebit dum corpus suum legitime fervabit, & earn non dabit nisi secundum velle suum, & terra & liberorum custos erit five uxor, five alius propinquior,&c. To be thoat by that golden Charter, Omnes malas confuctudines, quibus regnum Angliæ injuste opprime batur, inde abflulit, & lagam regis Edovardi reddidit. Thele were catted hing Edwards laws, not that liting Edward made them, fed quia ex tribus legibus, fc. Angloru, Danorum, & Merciorum unam legem communem edidit. Vide Ranulph' Ce-

frienf. Lib. 1. cap. 50. And where some have objected that wardship is a badge of servitude, for that in the wait of Nativo habendo, one of the Explees (amongst others) is capiendo redemptionem ab eo pro filiis & filiabus maritandis, & aliis Villanis ferviciis. That is, taking ransome of him for the mariage of his fons and daughters. and other villain fervices. To this it is answered, that the King for mariage of his Wards taketh no ransomes, but such moderate sums of money, as in rehed of the quality and fate of the Ward, he, or the, all circumstances consider red, is able to pay, and in regard thereof he hath the protection of the Court of Wards during minozity: but if ransomes should be taken, it should not only be against the right institution of Wardships before remembred, but also a badge of ferbitude: and therefore by the statute of Magna Carra, of H. 3. cap.4,5,6. (feeing the Crown had a long possession of the Wardship of the body and lands of the Kings tenant by Unights fervice) it was provided, first, that the King of his Grantee or Committee should not take of the lands of the heir but reasonable issues, reasonable customes and reasonable services, without destruction on, ic. (and all unreasonable and ercessive things are against the Common law, Excessivum omne in jure reprobatur.) Secondly, shall keep up the houses and other inheritance of the heir, and deliver to the heir all his lands fozed with ploughs and all other things (woods and all) at least as he received them: where: by it appeareth, that the value of the mariage should be so reasonable, as the beir hould not at his full are be enforced for payment thereof to fell either lands or goods. Thirdly, that if the heir be marted, that he be advanced thereby, and not

Ochham in di versis locis. Mirror cap. 165-28.95 Flera l. 1.ca 8.

The tenure (as before it appea. reth) was not then invented, but the fruits of the tentre of the King, viz Wardthip and mariage, which was

"Note, reasonable thrice repeated, observed.

John Carl of Driogo being the Bings Ward maried without the Bings It. Ror. Parl. centre; 15 H.6.nu.19. cence, for the which, both for the contempt, and for the duty to the king for so marying, he was fined at Three thousand pounds, which was not the value of his lands by one year: and yet he petitioned in Parliament to be pardoned of part thereof, which was thought reasonable. And certainly the reasonable rating of Wardhips of the body & lands is both according to the laws of the R calm, and a mean of increase of the kings Revenue.

As to the third: there were of ancient and latter times, goaffers as known.

As to the third: there were of ancient and latter times Paffers of heepers of the kings Wards for the kings best advantage, and the profits and revenue thereof were answered in the kings Court of Exchequer: as taking one cram-

ple or two in fread of many for both the points.

*Rex commist Radulpho de Nova villa Episcopo Cicestr. & Stephano de Segrave custodiam omnium Eschaetorum suorum qui accidunt per totum regnum Anglia, tam in Wardis, quam in omnibus aliis Eschaetis qua regi accidere possiur, & respondend'inde ad Scaccarium.

* See the flatute of 51 H.3. flatur' de Scaccario. Sherifs thall be Beepers of the Bings Wards, and answerable for the issues thereof in the Exchequer.

b WA hat care there was of ancient time to preferve the tree of pions, honour rable, and profitable tenures of the King, and for profit especially tenures in Capite and by knights service, and that the King thould be truly answered of Warrothips, and other fruits and profits due unto him by reason thereof, it notably appeareth by the Articles inquirable by the Austices in Cire, and by our ancient books.

* De Eschaetoribus & Subeschaetoribus in seisina domini regis facientibus vastum, vel destructionem in parcis boscis, vivariis, vel Warrennis infracustodias sibi commissas per dominum regem, quantum & de quibus, & a quo tempore. Item de eisdem qui occasione hujusmodi ceperint bona defin-Etorum, vel haredum in manu domini regis injuste, donec redimerentur ab eis, & quid, & quantum pro hujusmodi redemptione, & quid ad opus sum inde retinuerint, & à quo tempore. Item de eisdem qui minus sufficienter terras alicujus in favorem ejuschem, vel alterius cujuscunque cui custodis terrarum illarum dari, vendi vel concedi debuerit, in deceptionem domini regis, & ubi, & quando, & quid inde ceperint, & à quo tempore. Item de eisdem qui prece, precio, vel auxilio, vel favore consenserint, vel consuluerint quod custodia domini regis venderentur pro minore precio, quam vendideberent secundum verum valorem, vel maritagia ad dominum regem spectantia. Et si aliquo modo concelaverint custodias domini regis, vel maritagia baredum, vel tenentium de rege in capite, vel maritagia dominarum, viduarum maritataru sine licentia regis, & siquid propter hoc ceperint & quantum, & a quo tempore. Item de hiis qui reservaverint ad opus proprium custodiam, vel maritagium per leve precium, sive per concelamentum fattu versus dominum regem, & cujusmodi damnum rex inde habuerit, & à que tempore. Item cujusmodi seisierint terras, & per quantum tempus eas in manu domini regis tenuerint. Item de terris captis in manu domini regis, qua capi non deberent, & postea restitutis per praceptum domini regis cum perceptis, utrum percepta restituerint ad mandata domini regis, vel non. Et de omnibus pradictis factis & commisis infra viginti & quinque annos proxime pradictos pradicti Justiciarii se intromittant. Et omnesilliqui sentiunt se super hiis gravatos, & inde conqueri voluerint, audiantur, & fiat eis super hoc justicia, & ipsi Insticiarii pro hiis que dominum regem contingunt diligenter inquirant. &c.

Primo & principaliter inquiratur defeodis militum, & advocationibus Ecclesiarum ad dominum regem pertinentibus, viz. quot sunt, & qua sunt tenementa, & quantitas tenure, & per que servicia. Item

* Rot.finium. 14 H.3.m.g. Hereof fee Mat. Par. Anno domini 1231 16 H.3.Of Hubert de Burgo,& Stephen Segrave. See alfo Int.Rot. finium, Anno 3 E.1.m.4. Rot. Par.3 E.1.m.33. Rot.finium. 13 E.1.m.24. eRot.Pat.25 H.6. b See the First pt of the Inditutes, li.z. per totum.

" Capit.Itineris in Vet, Mag. Car-157.158. Bract.l-3.116.b. Britton fo.28. Fleta 1.1,ca.20.

Vet. Mag. Carta 160,161. Inter Capit. Escattriz. Item si feoda illa integra sint vel demembrata, non habendo respectum altempus. Item si demembrata, per quem, quando, cui, qualiter, quomodo, & quantum valent per annum. Item si tradamur alicui adterminum vita, vel annorum sine licentia regis, tunc cui, quando, qualiter, & quomodo, & quantum valent per annum. Et si tenentur per medium, per quem medium.

. Item de tenementis qua tenentur de rege in capite, vel teneri dobent, si aliquis faciat se medium inter dominum regem, & verum tenentem suum, tunc quaratur ubi, quando, qualiter, & quomodo, & ad quod damnum regis,

vel si modo tenuram mutaverint.

Isemo de aliis qui senent de corona per magnam Serjantiam, vel parvam, antiquum dominicum domini regis, socagium, feodi sirmam, vel per aliquod servicium, si iidem tenentes aliquod alienaverint, vel demembraverint, cui, quando, quantum, qualiter & quomodo, sive sint de aliquo honore, sive de corona, & de valore annuo. Et si aliquis, qui de rege tenuerit per antiquum dominicum vel socagium, mutaverit tenuram suam, & ad damnum regis, cui, ubi, quando, qualiter, & quomodo, & ad quod damnum regis, & quantum hujusmodi tenementum valet per annum.

Item se aliquis concelaverit aliquem redditum, sive aliquod servicium, seu aliquas consuctudines domino regi debitas, tunc quis, quando, qualiter, é quemodo, é que servicia, é quem redditum, é quas consuctudines, é que tenementa tenent de quibus débentur hujusmodi servicia, é quantum valent per annum, é ad quod damnum regis hujusmodi concelamenta

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Item, de haredibus quorum custodia & maritagium pertinent ad dominum regem, & dominus rex ea habuerit, quando deberet habere. Et si aliquis hujusmodi haredum ingressus fuerit sine authoritate curia, & absque legisima atais sua probatione si infra atatem, & si plene atatis, absque faciendo regi homagium, vel aliud servicium quod ei debet. Et tunc quis sit ille haves, quo tempore intravit, & post mortem sujus, & per quod servicium illa hareditas une atur, & quantum vales per annum.

Item de viduis similiter quarum maritagium pertinet ad regem, si se maritaverint sine licentia regis, cui, quando, cujus consensu; & ad quod damnum regis, & quantum tenementa valent qua tenent in dotem de primo

marito (110:

Item de haredibus qui deberent esse in custodia regis, & quis custodiani usurpaverit super regem, & à quo tempore, & quantum tenementa qua te-

nent valent per annum.

Item si aliquis hujusmodi haredum cujus antecessor de regetennit in capite, sive de aliquo barede in custodia regis existente, maritatus sucrit sine licentia regis, tunc cui, quando, & per cujus consensum, & quantum terra illa valens per annum, & quantum cepit pro maritagio.

Item si dominica terra domini regis in isto Wapentagio sunt in talistatu sicut esse deberent, vel si tradantur ad sirmam, si dimittantur secundum valorem annuum earundem, & si custodes, vel sirmarii vastum vel destructionem, venditionem seu exilium secerint in eisdem, vel in terris existentibus in manu dominiregis per custodiam, vel also modo, quis, ubi, quando, & c.

Pea so piccious was immediate tenures of the King, as you read in the Parliament Roll in 18 E.1. in these words.

Gilbertus

The Court of Wards and Liveries. Cap.35.

Rot. Par. 18 E. I. fo.4.nu.52. Note the form of this tenure.

Gilbertus de Vmphrevill petit licentiam quod posit feoffare Gilbertum filiam suum primogenitum, & Margar. uxorem ejus de manerio suo de Overton, Tenend' de ipso Gilberto patre durante tota vita ipsius patris, & post ejus decessum de capitalibus dominis feodi. Respons. Rex non vult aliquem medium. Ideo non concesit.

14 E.3.ca.13. ftat. I .

By the statute of 14 E.3. if the heir of the kings tenant in Chief, ac. befound within age, and the nert friends of the beir, to whom the inheritance cannot bescend, thall come and offer them to take the faid lands, peelding the value to the King till the age of the beir, as far forth as other will yeeld without frand: by accord between the Thancelog and the Areafurer, they thall have Commission to keep the faid lands by good and fufficient furety till the age of the faid beir. and to answer the thing the value. In this Ad this Treasurer is intended of the Treasurer of the Crchequer. See befoze in the Chapter of the Court of Crchequer.

Amongst the petitions of the Commons, they pray that the faid fatute of

1 4 E.3. map be observed, which the king granted.

Rot. Par. 1 R.z. nu.79. Rot. Par. 50 E.3 nu. 118. Ro. Far. 32 E.4. nu i6.not in print.

It is provided by Act of Parliament in Apno 22 E.4. that where funding the Bings tenants holding of him immediately as of his Duchy of Lanc'by fun-Dep recoveries, fines and feoffments in use, defeated the King of Wardhips of body and lands: It is enaced, that the Bing and his heirs thall have the Ward. thip and cultody of the body and lands of every fuch person being within age, to whose use the see simple or see tail of any hereditaments so holden thall grow as heirs by the death of any of his Auncestors, and if they be of full age to have relief not with standing any fuch conveyance.

An eract provision is made for write to be granted out of the Chancerp to the embeliling of any such heir upon pursuit of the Atturny of the Duth.

By the statute of 4 H.7. It is provided that the Lord of Cesti que use, no will being declared, ac. Chall have a Wait of right of ward for the body and land, and the heir of Celli que use being of full age at the death of his Aunce (to: thall pay relief. And the beir of Cesti que use thall have like action of wast, as if the

Anncestor had died seised, tc.

Apon this fatute, a cafe that had in Mich. 1 & 2 Eliz. Depended undifculled thirty years, as the Lord Dier reports, but not in the Court of Wards, (for that Court had not then had so long continuance) but in the Chancery and the Court of Wards it had so long continued, though in 7 H. 8. it had been resolved by all the Judges in the Erchequer Thamber, that Celli que use of lands in fee by Unights fervice in Capice, and of lands holden of another Load in focage dying leifed of the use of both, his heir within age, and no will by him declared, that the prerogative shall hold place: which resolution if it had been published in print,

the tedious and chargeable fuit had not fo long continued.

Boin for Traverles, Monttrans de droit, &c.to be relieved againft offices found for the king, you may read at large in our tooks, and especially in the Sadlers case in the Fourth book of our Reports, which being the birthright of the subjed for his relief against a false office found, cannot be denned upon just cause thewed, but not to be used for delay. This was the offence of Sir Richard Empfon and Edmund Dudley Patty Counsellors to Bing H. 7. and Baffers of his forfeitures (a new and unaccustomed office) who causing fecret and falle offices (as thall appear hereafter) to be found, the parties grieved were denyed to have their traverle, Monstrans de droit, &c. which king H. 7. a little before his death being far gone into a confumption, with great remorfe of confcience amongsto ther things repented, and by Poclamation under the Great Seal in print (a. mongst other things published in these words.

And that none of his subjects ne make no doubt nor difficulty in all causes leefull to make traverses, for his Highnesse will expresly, and straightly chargeth and commandeth his Chancelour and Treasurer that they not only admit fuch traverses, but also grant the ferms, where

the case shal require, according to the true course of his laws.

Ibidem nu. 17.

4 H.7.ca.17. A generall law. Note the leverall ennings of thefe two feveral Acts.

Dier 1 & 2 El. fo.174.

Keylway 7 H.8. 176. beiween Conisby and Throckmorton for the heir of Ruffell.

Lib.4.fo. 55 &c. Vid. 2 E 6.cap 8. Li.7.fo. 45. Li.8. 168,169. See the 2. part of the Inft. Cap. the flatute of 2 E.6.cap.8. See 50 E.3. nu. 184. Sce hereafter 1 H.8.cap. 12. This Proclamation we have.

See the flature of 1 H.8.ca. 12.in ratifying hereof.

Dere-

Bereupon many men were admitted to their traverles, and many on the other me were without remedy; for by the practice of Emplon and Dudley, many were not onely benged to traverle, but inforced upon fuch falle Diffices to fue out their generall Liberies, whereby they were concluded, and could not by Law be ad: mitted to their traverse.

Bing H. 8. in the first years of his reigne intending to give remedy against 1. H.8.cap.8. ferret Dffices, both by Act of Parliament probite, " That every Escheator and 3.H.8.cap 1. Commissioner shall sit in convenient and open places, according to the Statute 34.E.3.cap. 13. heretofore made: and that the faid Escheators and Commissioners shall suffer every person to give evidence openly in their presence, to such Inquests as shall be taken before any of them, upon paine of xl. li.

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And by the Preamble and other parts of this Act of 1. H. 8. the finister and and Dudley offimiuft dealing of the faid Empson and Dudley, concerning the finding of Offices, are pourtraged out, whereby the kings Subjects then of late had beene fore but, troubled, and wronged, and some differited by fine other wayes. 1. In nied to give in canling untrue Offices to be found. 2. In returning of Offices that neber pere found. 3. In changing of the Offices that were truly found. 4. That elebeators and Commillioners were men of no livelibood, but indigent and unbotthy persons, ready to serve turnes, and having nothing to lose,or to make las Of the high Court tisfaction to the party griebed. 5. That Juross were returned to; the finding of Parliament. of Offices of no hability, o; behaviour. 6. That the Cicheator or Commiffice ner, when the Jury were agreed of their berdid, would not receive the fame, but therein use belapes. 7. That the Clerk of the Petit Bag, sc. would refuse to receive, and file fuch inquititions as were found and offered to them. 8. The like of the Officer in the Erchequer, of Offices returnable into the Erchequer. 9. The Clerke of the Petit Bag would refuse to transcribe the Dffices, ac. into the Erchequer. For all which, and the other two before named, remedy is probibut by this Ad, as by the same appeareth, At the same Parliament for the redresse of parties grieved for fuing out of I tveries, another Act is made, entituled, An act 1. H.8.cap. 12. concerning untrue inquisitions procured by Empson and Dudley, in these words.

Shewen to your discreet wisedomes, that where divers and many untrue Inquisitions by the procurement of Richard Empson Knight, and Edmund Dudley, have beene had and taken within this Realme, as well before Commissioners assigned by Letters Patents of the late King, King H. 7. as before his Escheators, as well by vertue of Writs of the faid late King, as by vertue of their office, by the which Inquisitions fometime parcell of the faid Lands contained in the faid Inquisitions. and sometime the whole Lands there founden holden of the said late King in Capite, where in troth the faid Lands contained in the faid Inquisitions, nor no parcell of them was holden of the said late King in Capite, ne of any his Progenitors: To the which Inquisitions the parties then grieved by the fame, could not, nor might not take their traverse to the same according to the Law of the Land, but were infor- "Ih's is intended ced and constrained to sue their * Livery of the same out of the hands of of a general Lithe faid late King, whereby they were, and be a concluded to fay, that Generall Livery the faid Lands be holden of the King in Chiefe, to their great loffe and concluded hindrance, where in truth they were not holden of the faid late King ne Mich. Jacobi hindrance, where in truth they were not holden of the faid late King, ne refolved by the of any his Progenitors. Wherefore be it enacted, ordained and esta- two Chiefe Justi-

36.E.3.cap.13. By the procure-ment of Emplon ces were found in fecret places, and men were deevidence for proof and tenures. a See before cap.

ces, and the Chief

Baron, and the Court of Wards, in Holmes Cafe. 1. That the fuing of a generall Livery concludes the heire, as here it appeares the by this Act of Parliament, but otherwise it is of a special Livery, for that, as to the tenure, is but, ut dicitur.

2. That this conclusion or Estoppel continues that during the life of the heire that such the generall Livery; for Junors are sworne ad veritation dicense, and are not bound by Bstoppels.

3. That by suing of Livery, and the death of the highest heir that the second and the death of the beire, the office is executed, and bath taken his full effect, and therefore the Estoppel expireth therewith, and after the office cannot be traversed. Vide 46.E.3.fol. 12. 44.All.p.35. Nota dictum Morobray ibidem, Si un tient de Roy, Oc. 1.H.4 6. 33.H.6.fol.7. per Laicon. Observe well the remedies provided by this particular Ad. &c. whereby the Common Law is affirmed. Dd

blished by the King our Soveraigne Lord, the Lords spirituall and temporall, and by the Commons in this present Parliament assembled, and by the authority of the same, that every person and persons having posfession of the said Lands contained in the same Inquisitions, or any par thereof, may be admitted to have their traverse to the said untrue Inquisitions, notwithstanding any Livery sued in the time of the said late King, King H.7. And that it be further enacted by the same Authority, that any Livery fued of the same in the time of the said late King, ne any thing contained in the fame Livery, be any conclusion after the course of the Common Law, or in any wife hurtfull or prejudiciall to any perfon or persons, that shall happen to tend their traverse to the said Office, but that they and every of them shall be admitted to their traverse to the faid Inquisitions, and to have like advantage in the Law, as though no livery had beene fued of the fame in the time of the faid late King, and this at the reverence of God, and in the way of charity, &c. Provided alway, that they, or any of them which shall tend their traverse to any of the faid Inquisitions in any manner and forme as is aforesaid, shall not be restored to any mean issues or profits of Lands and Tenements comprised in the said Inquisitions.

See the first part
of the Institutes
Sect. 441. See
before Cap-of
the high Court
of Parliament.

Pow touching Liveries which in those dayes were generall, what a world of troubles the subjects suffered for milling of Livery in respect of pretended omis sions, and the like, what charging the Subjects with values not found by any Diffice, not appearing by any Melius inquirendum with mean rates where none were, or for longer time, then they were due, and the like, and these not recover red by course of Law, but sending for the parties by Pursebants, and by their awfull countenance mirt with menaces and threats, drew them to compositions: Which, and other like opprections and injustice, filled King H.7. Tofers; for by the Close Roll in Anno 3. H. 8. it appeareth, that the King left in his Cofers Fifty and three hundred thousand pounds, most part in foreine Coine, which in those dayes was not of least value. Potwithstanding King H. 8. at his Parlia ment holden in Anno 5. of his reigne, Cap. 7. moved for a Sublidie, and was de nied it : whereupon an Act was made for taking out of generall Pardons, as a meane to bying money to the King. But I perswade my selfe the Reader will inquire what became of these two wicked men, Empson and Dudley. Thean: fiver is, that first they were severally indiced as followeth.

Iuratores prasentant quod Richardus Empson nuper de London Miles, nu-

5 H.8.cap.7.

per Consiliarius excellentisimi Principis Henrici nuper Regis Anglia Sepimi, 10. die Maii, anno regni dicti nuper Regis vicesimo, ac diversis vicibus antea & postea apud London, & c. Deum pra oculis non habens, sed ut filius diabolicus imaginans honorem, dignitatem, & prosperitatem dicti nuper Regis, & prosperitatem regni sui Anglia minime valere, sed ut ipse magis singulares favores dicti nuper Regis adhibere * unde magnatem sieri potuisset, & totum regnum Anglia secundum ejus voluntatem gubernare, falso, deceptive, & proditorie legem Anglia subvertens, (inter alia) idem Ricardus dictis die & anno apud London in Parochia & Ward prad & c. diversas falsas Inquisitiones, & Officia de intrusionibus & alienationibus, de maneriis, terris, & tenementis, diversis ligeis ipsius nuper Regis inveniri procuravit & excitavit, quod ipsi maneria, terras & tenementa in Inquisitionibus illis specificat de domino Regein Capite vel aliter tenerent, cum ita non fuit, ac postes cum dicti ligei dicti nuper Regis ad Inquisitiones illas sic fact traversias in Curia ipsius nuper Regis secundum legem Anglia tendere & allegare voluis

sent, iidem ligei ad traversias illas admitti non potuissent, sed se debitis &

legitimis

* Ambitio.

Proditoriè legem Angliæ subvertens.

Falfas Inquilitiones & Officia, &c.

Ad trasversias admitti non potuissent,

The Court of Wards and Liveries. Cap. 35.

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legitimis traversiis ad officia pradiet' faciend' custodivit & retardavit quoalque ipsi cum dicto Ricardo diversas magnas & importabiles fines & redemptiones, tam pro commodo ipsius nuper Regis, quam pro singulari commo- Pro singulari do ipsius Ricardi fecer', in magnam depauperatione eorundum ligeoru. Et quod commodo ir sus pradictus Ricardus dict' die & anno in Parochia & Warda pradict', as diversi vicibus antea & postea diversos ligeos dict' nuper Regis de dicto domino Rege diversa maneria, terras, & tenementa per servic' Milit' tenent', & mort' antecessor' suis ipsis infra atatem existent', & in custodia diet' nuper Regis ratione tenura sua, cum ad atates legitimas pervenerunt, & debitam liberationem maneriorum, terrarum, & tenementorum suorum secundum formam & legem Anglia, ac secundum cursum Cancellaria ipsius nuper Regis Ad debitam libeprosequi voluissent, ad hoc recipi non potuissent, sed ad hoc faciend' totaliter meat' & exclus fuerunt, quousque ipsi cum pradict' Ricardo diversas magnas d'importabiles fines et redemptiones, tam pro commodo ipsius Regis, quam pro commodo ipfius Ricardi fecer sin magnam depauperationem eorundem ligeomejusde nuper Regis. (And the conclusion of the Indictment is,) Per quod plures & diversi populi dicti nuper Regis hiis gravaminibus & injustis exurtionibus multipliciter torquebantur, in tantum quod populi dicti nuper Regis ver sus ip sum Regem multipliciter murmurabant, et malignabant in magnum periculum ipsius nuper Regis regni sui Anglia, ac subversionem legum et consuctudinum ejus dem regni.

rationem admitti non potu ffent.

The relidue of the Indictment concerning other exorbitant oppreffions and grievances, are worthy to be read, but concerne not the matter in hand.

Quorum vestigiis qui infiftunt,eorum exitum perhorrescant.

True it is, that in this Indiament (prodicorie) was used but the aggravation, and as a preparative to greater offences, for in the same yeare they were both indiced of high Areason both by the Common Law, and Act of Parliament, and in the 2. years of H. 8. they lost both their heads. And albeit in some respects the speciall Livery is so, the benefit of the hepze, yet the sees and charges are so creat, and the Bonds and Covenants, ec. fo many, so intricate, and dangerous, as it were worthy to be redressed, for the ease and quiet of the fatherlesse, and widow, (being no benefit to the King, but to fill the purses of Clerkes and Officets) by authority of Parliament; and the rather, for that special Liveries were of ans cient time, as thout as the charges thereof; whereof you may reade a notable prefident, when Wardhips and Liveries were in their Cradles, which followeth in these words.

Richardus Dei gratia Rex Anglia, Dux Normannia, Aquitania, Comes Vide in the hilto-Andegavia, Archiepiscopis, Episcopis, Abbatibus, Comitibus, Baronibus, Justiciariis, Vicecomitibus, & omnibus Ballivis, & fidelibus suis, ad quos prasens Charta pervenerit, Salutem. Sciatis nos a concessisse, & prasenti Charta nostra confirmasse dilecto & fideli nostro Galfrido filio Petri, & Beatricia de Sayeo uxori ejus, tanquam justo & propinquiori haredi, totam terram Comitis · Willielmi de Mandevile, qua ei jure haxeditario pertinebat, cum omnibus pertinentiis, & libertatibus, & liberis consuetudinibus suis. Quare volumus, & firmiter pracipimus quod pradicti Galfridus & Beatrix uxor sua, & haredes corum habeant & teneant de nobis & haredibus nostris totam pradictam terram cum pertinentiis suis, sicut pradictus Comes Willielmus de Earle of Essex. Mandevile eam melius, & liberius, & honorificentius, & integrius, & quietius habuit unquam & possedit, in bosco, & plano, viis, semitis, pratis, pascuis, pasturis, aquis, vivariis, stagnis, piscariis, molendinis, turbariis, in advocationibus Ecclesiarum, in custodiis valectorum, & donationibus puellarum, & in omnibus aliis locis & aliis rebus. Hiis testibus Waltero Rothomagensi Archiepiscopo, Johanne Eboracensi Episcopo, Rogero de Pratellis Dapi-

ry of Hovenden, pag.446.2.R.1. a Nota, concessife is a fure word in cmnem eventum, and will answer to a Livery. b This Getfery Fuzpeter was after Chiefe Justice Mandevile was .

fero nostro, Richardo de Kanvile, Bertrano de Verduno, Radulpho silio Gode. fredi Camerario nostro. Datum per manum Magistri R: mali catuli Clerici nostri, Anno regni nostri secundo, xxiij die Januarii apud Messanam.

Pow are we arrived at the faid Act of Parliament in Anno 32.H.8. wherein, and in the Statute of 33. H.8. belides the expolition of the severall Terts, we

will observe what alterations these two Ads have made.

Ordaineth, maketh, establisheth, and erecteth a Court, &c.] Herein three things are to be observed. 1. That this new Court could not be erected without an Ac of Parliament. 2. That when a new Court is erected, it is necessary that the jurisdiction and authority of the Court be certainly set downe. 3. That the Court can have no other jurisdiction, then is expressed in

the erection, for this new Court cannot preferibe.

Palch. 6. Ja the Bishop of Salisbu. ries cale. Pasch. 6. Ja. the case betweene the king and the Bishop of Salisbury, referred to the two Thiese Instites and Chiese Baron, by the Lozds of the Honourable Ozder of the Barter, was this. King E. 4. by his Letters Patents in Franch, bearing date 10. Octobris, Anno 15.06 his reigne, reciting, that where there was no Office of the Thanceloz of the Barter, that there should be such an Office of the Chanceloz of the Garter, and that none thould have it but the Bishop of Salisbury sould have will and ordaine, that Richard Beauchampe, now Bishop of Salisbury, should have it for his life, and after his decease, that his Successors should have it for ever. And amongst divers other points it was resolved unanimously, that this grant was void, for that a new Office was errected, and it was not defined what jurisdiction or authority the Office should have, and therefore for the incertainty it was void. Thich being reported to the Lords, they were well satisfied therewith, and thereupon the Office was granted to Sir John Herbert the Kings Secretary.

A Court of Record. Where it is to be noted, that albeit the proceeding in this Court be in English, yet it is a Court of Record by expresse works

of the Act.

I And shall have also a Seale, &c.] This is also necestary to a Court.

That all Wards, &c. In the Clause extendeth as well to the Counties Palatines of Lancaster, Chester, and Duresme, as to any other the parts of the Realm of England, but in severall manners. For as to the Wards within the Realm of England (out of the said Counties Palatines) the Wards within the Realm of England (out of the Chancery of England, returnable in the Chancery of England. And as to the Wards in the Counties Palatines of Lancaster and Duresme, the Writ likewise issueth out of the Chancery of England, but is returnable into the Chancery respectively of these two Counties Palatine, and the Chancelors thereof are to transcript them into the Court of Wards.

a But for Wards in the County Palatine of Cheffer, no Writ issuethout of the Chancery of England, but it ought to be found by force of a Writ or Commission out of the Chancery there in the Erchequer, and transcripted by the Chamberlain of that County Palatine into the Court of Wards, Nos dum haredes in custodia nostra existent, indemnes & sinc exharedatione conservate te-

nemur.

And by this Clause of this Act of 32. H.8. the power that the Lord Chance

log and Treasurer had for letting of Wards lands, ac. is taken away.

d By the statute of 18. El. It is enasted. That all Inquisitions & Offices to be found before any Escheator or Commission, or otherwise within the said County Palatines of the said Duchie of Lancaster, Chester, and Duresme, or any of them, shall be returned by the said Escheators or Commissioners within one month next after the taking of any such Office or Inquistion into such place or places, and to such office and offices, as heretofore they have usually been accustomed to be certified and returned into, upon paine to forseit for every default xl. li. to the use of our said Soveraigne Lady, her heires and

V.Rot. Parl.g.R. 2 nu. 13. the refolucion of all the Judges of Engl: what right the Duke of Lancafter had to the Wardthip of Ifabel the Heire of Tho: of Lathom whom Sir John Stanly had mirried, for the mannor of Lathom holden of him in chiefe as of his County Palatine. V.26.H.8 9.b. a 14.Eliz. Dier. 303. b Mich. 26. E. I. coram Rege. Buck. William de

Ludares cafe.

€ 8. H.6.cap. 16.

18.H.6.cap.6. d 18 Eliz.cap.13.

Cap.35. The Court of Wards and Liveries.

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and successors. And that the Clerk of the said Duchy of Lane, the Vicechamberlain of the faid Farldome of Chefter, and the Chancelour of the faid County Palatine of the faid Bilhoprick of Duresme, or other the said Officers or Miniflers within the faid Counties Palatines, or their Deputy or Deputies, and every of them for the time being having authority to receive any fuch Office or Inquifiction, to whole hands any such Office or Inquisition shall come to, shall certifie, or cause to be certified under his or their hands in parchment the true transcript of every such Office or Inquisition taken before any of the said Escheators or Commissioners unto the Master of the said Court of Wards and Liveries, in such like manner, form and fort, as is limited and appointed to the Clerks of the Petit Bag in her Highnesse said Court of Chancery to transcript the same, upon pain to forfeit for every such default 5 lig to the use of our said Soveraigne Lady, her Heirs and Successors: which transcript so to be certified shall there remaine of Record in like manner and form to all intents and purpoles, as the transcripts of other Offices already certified into the faid Court by the Clerks of the Petit Bag in her Majesties high Court of Chancery, are used : any Custome, Statute, Act, Proviso or Provisoes heretofore had, made, or used to the contrary in any wife pocwithstanding.

The statute of 32 H. 8. for erection of the Court of Mards extended only to Mards: but the statute of 33 H.8. annereth to this Court Liveries also. Poin in what cases the Heire shall be in Ward or sue his Livery, either by the Common law, or by the statutes, a specially of 32 H.8. & 34 H.8. &c. and of all incidents to the same, you shall reade plentiful matter both in the First part of the Institutes Cap. Escuage. & Cap. Service de Chivalier: and also in the Books of my Reports.

Which the Kings Highnesse, &c.] Although successes be not here named, yet (Kings Highnesse) being spoken in his Royall and politick capacity, which never dieth. doth extend to his Successes: otherwise this Court had been disolved by the demise of H. 8.

a All the Justices in Ireland certified, Quod homagium tantum dat secundum Banco.

Rot. 126. Warw, debeatur.

Abbot of Malmf-

of b Intitled to have That is by Dffice to be found.

With their Mannors and Lands, &c.] This Clause extendeth only to the Inheritances of the Ward, and not 'to any of his goods or chattels, belts or duties, ac. but hereof more shall be said hereafter in his proper place.

In the order, survey and governance of the said Court.] The generall woods of this Act extend not into Ircland, so, that is a divided, and distinct Lingdome and bath a proper Seale. I Por to the Isle of Man, because it is no part of the Realm of England, and out of the power of the Chancery of England, and not to be bound by our Parliament of England, but by speciall name.

[And that the Master of the said Wards] By this Clause the spar it holden Trin.

fter only hath power to award Proces.

E Such Proces and Precepts with reasonable pains therein limited, as be now commonly used in the Court of the Duchy Chamber of a case referred to Lancaster being at Westm.] • Note, the Duchy of Lancaster was created a County Palatine by Act of Parliament in Anno 50 E.3. Adeo plene & integre secure comes Cestria infra eundem com' Cestria dignoscitur obtinere. And beresupon the Court of Wards is well warranted to be a Tourt of Equity, and accordingly from the erection hereof it hath proceeded.

¶ For or concerning the Title of the Kings Majesty.] This is

And that the Master of the Court of Wards for the time being the Duchy of shall make and appoint all and singular particular Receivers, Feodaries, And Pl. com. and Surveyors in every Shire, and also fees for the execution of the fo.214.8 215. same under the Seale of the same Office in such wise as the same Officers may be alwayes removeable at the discretion of the said Court.]

16. in Townsends case.

Feodarius

Abbot of Malmfburies cafe. b See 33 H.8. cap.11. A prcviso for the Duchy of Lanca fer. c 14 Eliz. Dier d Mich. 14 H.8. Tenus per Brudnel Brook et Fitz. in Keylways Rcport. And fo was 40 Eliz. by Popham, Anderson, & Peryam,upon a cale referred to them by the Lord's of the Councell, be-Heirs generall. e See more here. of in the Chapter of the Court of Lancaster.

The Court of Wards and Liveries. Cap.35.

purt of the Inft. Sect. 1. Feodarius of Feudatorius is derived à Feodo seu Feudo, which in one sense signifieth a * Seigniory of Tenure: His Office consistest principally in three things. r. and principally to be skilfull in the knowledge of the Kings Tenures within his Office out of Records and authenticall Looks. 2. At the finding of Offices to doe his uttermost indeavour to manifest the truth concerning the Kings Tenures. 3. After the Office sound to survey the Mards lands, and rate it.

See Pl. Com. fo. 297. Carils cafe. See Mag. Cart. cap. 5. The flock of goods shall be restored to the heire. Glanvil fo. 54. Fleta li.i. ca. 11. Prarogativa regis, cap. 3. Orother cause in any wise touching or concerning any thing appointed to the order of the said Court, for, and on the behalfe of our Soveraigne Lord the King.] By this Clause, if the Beir within age and in Ward have any goods and chattels, debts, duties, or other thing due unto him, an information may be erhitted by his Pasetties Attorny of his Wards sor his Opasettie on the behalfe of the Beir; sor this doth touch or concern the value of the Wardship of the body, which is appointed by this Aa to the order and survey of this Court, sor the value of the martage is hereby advanced. But if the Beire at the death of his Ancestor be of sull age, seeing the primer season is certain, no suit can be in this Court for any goods, chattels, debts, it. belonging to the Beire of sull age: for this doth not in any wise concern any thing appointed to the order of this Court, viz. neither the Wardship of the body, or of the lands of the Beire.

Also be it enacted that the said Attorny, Receiver Generall, and Auditors , &c.] The Judges of this Court are the Mafter, the Surveyor, the Attorny, Receiver Benerall, and the Auditors of that Court. For the words of the statute of 32 H. 8. are, That the faid Attorny, Receiver Generall, and Auditors, shall diligently from time to time attend upon the faid Master in the faid Court for the hearing and ordering of matters and causes, &c. and the star tute of 33 H. 8. hath added the Surveyour in the fecond place in that Court: and albeit honoris cauta, they are to attend on the Pafter, as the chief and mine civall Officer of the faid Court, for fo he is filed by both the faid ftatutes: pet fuch attendance is too the hearing and ordering of matters and causes, ac. which maketh them Judges. And fee the Dath of the Surveyour which probeth his Diffice to be judiciall : for by the statute of 33 H. 8. his Dath is (inter alia,) That he shall minister equal justice to rich and poore, &c. and that he take no gift or reward for any matter depending, &c. in that Court. And the like Dath in ele fea taketh the Attorny, the Receiver Benerall and Auditors, by the faid Adof 32 H.8. And fo it was resolved in Auditoz Curles case when Robert Carle of Salisbury was Hafter of the Wards and Lord Treasurer of England.

See the Catute of Lincolne 29 E.1. Stanf. Prar. Regis Ca. Reseiler. See and table case upon that Catute within three years after the making thereof. Hil.

32 E.1. Coram rege. Northampton Jorden Twinewikes cafe.

At the Parliament holden 18 Jacobi Regis it was moved on the Kings behalfe, and commended by the King to the Parliament for a competent yearly rent to be assured to his Parliament by the King would assent that all Wardhips, primer seasons, reliefs for tenures in capite, or by Knights Service should be discharged, ac. Wherein amongst certain old Parliament men these thirteen things did fall into consideration for the effecting thereof.

1. That it must be done by Act of Parliament, and otherwise it cannot be done.

Done.

- 2. That all Lands, Aenements, Rents, 02 Hereditaments, holden of the Ling, to be holden by fealty only, as of some honour, and such rent, as is now due.
- 3. That all lands holden of Subjects, Bodies Politick or Torporate, by Unights service to be holden by fealty, and such rent as is now due: for if lands thould be holden of them by Unights service, the same might come to the Uning.
 - 4. All Subjects, Bodies Politick and Copposate to be disabled to take and Lands.

Hil.7. Jac.li.11. fo.2. & 3. in Auditor Curles cafe Lands, Tenements, Rents, og Bereditaments of the King, his Beirs, og Successors by any other tenure, then by fealty only, and pearly rent, or without rent of some honour.

5. Po Subject, Bodies Politick or Corporate to create by any license, or any other way or means, any other tenure then by fealty and rent, or without rent up-

on any estate in fee-simple, fee-tayl, o; otherwife.

6. In respect of the faid discharge and freedome of the Subjects and their poste rities, and that they thall be also discharged thereby of fines and licenses of alies nations, respect of homage and reliefs; * a Competent rent to be affured to the Bing, his Beirs, and Successors of greater yearly value then he or amp of his medecellors had for them all, which rent is to be inseparably annered to the answered for Crown, payable at the Receipt only.

7. A convenient rent to be affured to the Lords for every Bnights fee, and fo

ratably.

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8. Commissions for the finding out of the tenures of the Bing, and the Subled to be returned, tc.

9. Abcots and Madmen to be in the cultody of fome of their kindzed, sc. and

not of the Iking, his Beirs or Successors.

10. The Court of Wards to be diffolived with Pentions to the prefent Df.

11. Provision to be made for regulating of Bardien in Socage, and that the Ancesto: map appoint Bardians, ac. and that no Bardian shall make a grant to the Kina.

12. Provision to be made that Bishops shall continue Lords of Warliament, notwithstanding their Baronies be holden in Socage.

13. That the Act thall be favourably interpreted for discharge of all Wards

hips, tc.

Which motion, though it proceeded not to effect, pet we thought good to ree * spereft vigilarmember it, together with these considerations; ' hoping that so good a motion tending to the honour and profit of the King and his Crown for ever, and the freedom and the quiet of his Subjects & their posterities, will some time or other king man. (by the grace of God) by authority of Parliament one way or other take effect and be established.

And we will conclude this Chapter with holy Scripture : Deus eft pater Or- , Plal 46.9. & 67.6 phanorum, & Judex viduarum. And again, Deus custodit advenas, pupillum, & viduam fuscipier. And lattly, in Deuteronomy 27.19. Maledictus eft qui perver- Deut. 27.19. tit judicium advenæ,pupilli, & viduæ.

"firft fearch muft be made what the King hath been thefe, &cc.

tis sommium. Hope is the dreame of a wa-

CAP. XXXVI.

The Court of the Duchy Chamber of Lancafter at Westm'.

Dealmuch (as it hath been faid) the Court of Wards hath fome reference to this Court of the Duchy, we thought it fit to treat of this Court of the Duchp nert after the faid Court of Wards, for that it may gibe fome light thereunto. Now for that the County of Lancatter is a County Balatine, it that be necessary to thew the beginning and erection thereof.

thing Edward the 3. created John his fourth fon Carl of Richmond, Appe Domini 1355. De 19 Maii Anno Domini 1359. marted Blanche youngest daugh ter of Henry Duke of Lancaster (the second Duke that England saw.) Duke Henry bied of the plague, Anno 35 E.3. At the Parliament holden Anno 46 E. the Bing in full Parliament did gird his fon John with a fwood, and let on his head a Tap of Furre, and upon the same a circle of gold and pearls, and name him Duke of Lancatter, and thereof gabe to him, and to his heirs males of his body, and delibered him a Charter.

In full Parliament, Anno 50 E.3. the King ereded the County of Lancater a County Palatine, and honoured the Duke of Lancaster therewith for tearn

gestus magnificos cunctorum qui nobis in guerris nostris laudabiliter & strenue servierunt, ipsos desideremus honoribus attollere, & pro viribus juxta merita

præmiare, quanto magis filios nostros, quos cam in sapientia, quam in gestu no-

bili alios pracellere conspicimus, & qui nobis locum tennerunt, & tenere

poterunt potiorem, nos convenit majoribus honoribus & gratiis prarogate?

of his life in thefe words. Edwardus Dei gratia,&c. Sciatis quod si nos debita consideratione pensantes

Rot.Pat. Anno 50 E.3. See the 2.pt of the Inft. Mag.Cart.c.31. 32 H.6 fo. 13. the King may make a County Palatine by his Letters Patents with. out Parliament.

Rot. Pat. Anno

Rot. Par. 36 E. 3.

nu.36,37. Rot. Pat. Anno

29 E.3.

36 E.3.

a De affenfu Przlatorů & procerú. 12 E.4.16. 65. things to be observed for erecting a County Palatine. z Cancellaria. 2 Brevia fub figillo fuo. 3 Jufficiarios fuos tam ad Placita Corona quá alia placita, &c. 4 Quæcung; alia jura regal and Cem' Palatinum pertinentia. 5 Adeo libere & plene prout comes Ceffrix. Sec 19 H.6.12. 21 E.4.8. € 26 E.3.59.b.

Considerantes itaque probitatem strenuam, & sapientiam præcellentem chariffimi filii nostri Johannis Regis Castella & Legionis, Ducis Lancastria, qui laboribus & expensis semper se nobis obsequiosum exhibuit pro nobis pluties in necessitatibus intrepide se guerrarum discriminibus exponendo, & volentes eo pretextu, ac desiderantes eundem filium nostrum aliquali commodo & honore ad præsens (licet non ad plenum prout digna merita exposeunt) remunerare; ex certa scientia nostra, & lato corde a de assensu Pralatorum & procerum in instanti Parliamento nostro apud Westm' convocat' existen': b Concessimus pro nobis & hæredibus nostris præfato filio nostro quod ipse ad totam vitam suam habeat infra Comitatum Lancastria Cancellariam suam, ac Brevia sua sub sigillo suo pro officio Cancellarii, deputando, confignando Jufficiarios suos tam ad Placita Corona, quam ad quacunque alia Placita communem legem tangentia, tenenda, ac cognitiones eorundem, & quascunque executiones per brevia sua & mini-Aros suos faciendas. Et quacunque alia libertates & jura regalia ad comitatum Palatinum pertinentia, adeo libere & integre ficut comes Cestriæ infra eundem Comitatum Cestriæ dignoscitur obtinere,&c. But it appeareth by the book of 26 E.3. 59. b. that the faid Henry Duke of

Lancacter had the like grant; for there in a Parcipe the tenant vouched, and that he might be summoned in the County of Lanc', and the Touchee challenged, because in the County of Lancatter the Kings wait did not run, sed non allocatur, but a writ sent to the Duke or to his Lieutenant to summon the Touchee in the same manner as it should be done in Thester. Vid. 39 E.3. Voucher 198.

It is called Comiratus Palatinus, a County Palatine, not a Comite in respect of the dignity of an Carl, but à Comitatu, & à Palatio regis, because the owner thereof, be he Duke of Carl, tc. hath in that County Jura regalia, as fully as the

Divers have Counties Palatines that are not Earls, as shall ap. pear hereafter.

Lina

Bing had in his Palace, from whence all Zustice, Honogs, Dignities, Frandifes and Priviledges, as from the fountain, at the first flowed. Reither by this Charter was the Duke of Lancafter created Count Palatine, but the Counto was made a County Palatine. The power and authority of those that had counties Walatines was King-like, for they might pardon treafons , murbers, felonies, and outlawies thereupon. They might also make Buffices of Eire, Intices of Affife, of Gaol delivery, and of " the Peace. And all originall, and " 10 H.7.63. judiciall writs, and all manner of indiaments of treason and felony, and the procelle thereupon were made in the name of the persons having such County Dalatine. And in every wait and indiament within any County Palatine, it was imposed to be contra pacem of him that had the County Palatine. But these and 27 H 8.cap.14. fome others are taken away from them that have fuch Counties Palatines, and annered to the Crown, and all writs to be made in the Kings name, but the Teffe is in the name of him that hath the County Palatine : and they thall have for feitures of lands and goods for high treason, which forfeiture accreweth by the Pafch. 12 Eliz. common law. But for treasons or forfetts given after the erection of the Couns Dier 288,289. ty Palatine by any Act of Parliament, they thall not have them.

Inflices of Affile, of Gaol delivery, and of the Peace are and ever fince the 27 H.8.cap. 24. ention of the County Palatine of Lancafter habe been made and affigned by

Commission under the Seal of the County Palatine of Lancaster.

In the County Palatine of Lancafter fines are leved with three Proclama: 37 H.8 ca.19. tions, sc. before the Juffices of Affile there, or one of them, sall recoveries to be had of any lands or tenements in the County Palatine are to be had in the Court of that County Palatine, and cannot be had at Meftminfter.

a In trefpaffe in the County Palatine of Lancaffer , the Defendant pleaded # 22 H.6 48. a forgin release, the Court prefired a day to the parties in Bank, the Record must be removed by Cerciorari in Chancery, and by Miccimus into the Bench, b 27 E 3.84.

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If iffue be joyned in the Kings Bench, of Common Bench tryable in the 39 H.6.21,11. County Palatine of Lanc', it chall be treed in the County of Lanc' and remaunded hither.

Where a release or other speciall deed is pleaded in bar in any Tourt at 45 E.3. Vilne 50. Wellminster, within a franchise where the Kings wit runneth not, it shall be treed where the wait is brought. See the books quoted in the margent. And in this variety of opinions I hold the law to be, that this statute of 9 E. 3, extends not to cases when any other issue is somed tryable in the County Palatine of other franchife: And I ground my opinion upon the resolution of all the Judges of England in the Erchequer Chamber, in Anno 32 H.6.25. See 39 H. 6.21, fices. 10 H.4.40. 12, 21 H.7,33, 21 E.4.33,34,35,36,

Vid. Lib. Intr. fo.81,82. pl.8. Henry Parayes case in bebt, In Camera Guild-

hall Civitatis London.

Bing H.4. by his Charter by Authority of Parliament, Anno primo of his reign, doth sever the possessions of the Duchy, tc. from the Trown: And that which Iohn of Gaunt held for life, is established for ever, and fpecially by the statutes of 1 E. 4. and 1 H. 7. hereafter mentioned: and this separation H. 4. made, for that he knew he had the Duchy of Lancaster (par mulcis regnis) by fare and undefeable title: and he could not be both Rex and Dux, but specially that his title to the Crown was not so assured, for that after the decease of R.z. the right of the Crown was in the heir of Lionell Duke of Clatence, second son of E.3. John of Gaunt Father of H.4. being the fourth son: and therefore he in: tended not, that by the law of the Crown the Duchy hould go with the Trown, t that he should be seised thereof in right of the Crown, as the King afterwards was of the postestions of the Duchy of Pork, Carldome of Parch, and others.

Humphrey de Bohun Carl of Bereford, Cler and Rorthampton being the first and last Carl of that name, and feifed of large postestions in England and Wales, had iffue two paughters; * Eleanor the eldeft maried to Thomas Duke

of Blour', and Mary marico to the Carl of Hertford.

36 H.6.fo.33. 9 H.7.fo. 12.

21 H 7.33. 19 H.6.12. 32 H.6.29. 19 E.3.trial 66. € 9 E.3.Cap.4. 8 All 27.10 E.3. 41. 19 H.6 12. 53. 21 E.4.8.a. & b. 27 E.3 84. 46 E.3. Vilne 53. 10 H.6.15,16, Per Martyn. 8 H.6.3.per Strange. Lib.Int. Raffall fol. d Rot.Pat. 1 H 4. intituled Carta Regis H 4. De

tate Parliamenti annorigni sui pric Rot. Par. 1 E.4. Pl.Com. 219.b. Vide Rot. Parl. 1 H. 6. Partition recited an 9 H.5 between H. s.and

the faid Eleanor.

separatione Duca-

a Corona authori-

tus Lancastria

The Court of the Duchy Chamber. Cap.36.

Rot. Par. Anno 2 H.5.nu.30. 3 H. s.nu.15. confirmed, and that no land flould paffe of Duchy, but under the Duchy feal. 2 & 3 Ph.& Mar.cap. 20. a See the 1. part Inft. Sect. 8. 6 Rot. Par. 1 E.4. nu.26. Pl.Com. 322.

Princes cafe. c Rot. Par. 1 H.7. Nota his heirs without faying (Kings of Eng. land) is E.4. did. 21 E.4.60. Vid Dier 1 El. 168. h. d 22 H.8.cap. 20. 1 E.6.C1.14. 1 El.cap. 31. e Rot.Par. g R.2. nu.13. 28 H. 8. Brook Livery 55. Livery within the County Palatine, but not of atcnure without. 26 H.8.g.

Vid.33 H.8.c.39. * 22 H.8.c.20. 3 E.6.ca.i. Cuftos Rotulorum. f 2 & 3 Ph. & Mar.ca. 20.

21 E.4.60.71. Pl.Com.219.

Vid.33 H.8. cap.39. which fee before in the Chapter of the Court of Wards. See 27 H.8.ca.11. there also is a Chancelor of the County Palatine.

Hil. I E. 6. Brook Travers. 53.

It is enaded that all the Mannois and hereditaments which descended to H.s. after the decease of the faid Mary his mother , as fon and heir unto ber. thould be diffevered from the Crown of England, and annexed to the Duchy of Lancafter, and to be of the fame nature, as by the Bings Letters Patentseffa: bliffed by Parliament there appeareth; where you may read of many Franchifes and Liberties belonging to the Duchy.

a Were it is to be observed, that albeit these postesions descended to Bing H.c. as heir to his mother, pet he was thereof feifed in Jure Corona, and therefore

this Ad diffevereth them from the Crown.

b The Duchy of Lancaffer as feparated, sc. is by Act of Parliament affured to E. 4. and his beirs Bings of England. By this Ad all intails of the Duchy, or of any land annered thereunto are cut off, and by this made fee fimple to E. 4. and Vid.li.5. fo. the his heirs Kings of England. In an Act of Parliament without question this limitation of a fee simple is good. See the whole Ad.

. It is enacted that H.7. Mould have, hold, and enjoy to him and his * heirs for ebermoze the Tounty Palatine of Lancaster, and all honoze, ac. By which ac alfo all former intails are cut off, and in this fate both the Duchy fand at this day. All lands, ic. parcell of this Duchy given to the King by the Statute of Monafteries, Chanteries are Will within the furbey of the Duchie. Within the County Palatine of Lancaster the Duke babing Jura Regalia. his jurisdicti

on and vatbiledges therein were very great.

e The Duke of Lanc' complaineth by mouth to the King, Bishops, and Lozds in full Parliament; That where after the beath of Thomas of Lathome who held the Mannoz of Lathome in the Countr of Lanc' of the said Duke in Thebace whereby the manno; was feifed into the hands of the faid Duke of Lan cafter according to his County Palatine of Lancaster, yet not with standing John Scanley Enight as in the right of Isabell his wife daughter & heir of the faid Tho. had entred, and taken the profits of the faid mannor without any livery or other fuit made in the Chancery of the faid Duke, for which he prayed remedy. Atta which, upon full advice of the Justices of both Benches, and others of the Lings learned Councell, it was declared in the faid Parliament, that the entry of the faid John into the mannozas aforefaid, was unlawfull, and that the faid John ought to make fuit by petition, or otherwise in the Chancery of the faid Duke for the livery of the faid mannoz in fuch case to be fued foz.

Of the Franchises and Liberties belonging to the County Palatine of Land,

you may read Rot. Par. 2 H.s. Ubi supra.

Lands to be annexed to this Duchy under the Great Seal Chall be as good, as if it had been annexed by Parliament.

See the fatute of 5 El. cap. 23, concerning writs of Significavit, and Ex-

communicato capiendo.

Lands within the County Palatine thould patte by the Dukes Charter with out livery of feison or attornment, but of lands parcell of a mannor annered to the Duchy without the County Palatine, there ought to be livery of feison, and attornment of tenants, and in the same degree is it in the kings case. The reason hereof is, for that the County of Lanc' was a County Palatine, and the Duke then had Jura Regalia.

The proceeding in this Court of the Duchy Chamber at Weltm' is as in a Court of Chancery for lands, sc. within the survey of that Court by English bill-sc. and decree; but this Chancery Court is not a mirt Court as the Chances ry of England is, partly of the Tommon law, and partly of Equity, as hath been

faid. See before in the Chapter of the Court of Chancery.

The procede is by Privy Seal, Attachment, ic. as in the Chancery.

The Officers of this Court be the Chanceloz, the Atturny, the Receiber generall, Tlerk of the Court, the Auditors, Surveyors, the Pellenger. There is an Atturny of the Duchy in the Chancery, and another in the Erchequer. There be four learned in the law Anistants, and of Councell with the Court.

Where by office a tenure is found of the King Ur de Ducatu Lancastrix, and in

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truth it is not fo, there needeth no traverfe, for the Bing hath the Duchy as . In boc erratum Duke and not as king, and a man thall not traverle, but where it is found for eft, as it appear. the Bing: Sed aliter utitur in diebus noftris, as it appeareth in the cafe following.

Le roy (in droit de son Duchie de Lanc') Segnior, Rich. Hulme seisie del

Mannor de Male in le Countie de Lanc' terms del roy come de son dit Duchie per service de Chivalry Mesne, & Robert Male (seisie des terres in Male tenus del Mesne come de son dit Mannor per service de Chivalry) Ten'. Rich. Hulmemorist; Apres que mort. Anno 31 H.8. fuit trove que il morist seise del dit mesnaltie, o que ceo discend al Edmonde sen fitz deins age, & trove le tenure avandit oc. et durant le temps que il fuit in gard Robert Male le ten' morist: apres que mort Anno 35 H. 8. fuit trove per office que Robert Male mortist seisie del dit tenancy peravaile, et que ceo discend alson fitz & heire deins age, et que le dit tenancie fuit tenus del roy come del dit Duchy per service de Chivalrie (en in veritie ceo fuit tenus del Edmonde Hulme adonques in gard in le roy come del dit mesnaltie,) per que le roy seisist legard del heire le ten', & puis 4 fac. Regis nunc apres le mort de Rich. Male que fuit lineal heire del dit Robert Male, per un auter office trove fuit que le dit Rich. morist seisie del dit tenancy, et ceo teignoit del Roy come de son Duchy per service de Chivalry son heire deins age, Sur ceo Rich. Hulme cousin & heire del dit Rich. Hulme, ad preferre un bill destre admit a son travers de cest darrein office trove in Anno 4 fac. Le question fuit, le quel lossice trove in 35 H. 8. soit ascun estoppel al dit Hulme a traverser le darrein office, ou si le dit Hulme serra chase primerment atraverser lofficede 35 H.8. Et fuit object que il doit primerment travers loffice in 35 H.S. come in le case de 26 Ed.3. fol.65. que si 2. fynes sont levy de 26 E.3.fol.65. terre in ancient demesne, le Segnior de que la terre est tenus, doit aver briefe de discent a reverser le primier fine, & in ceo le 2 fine ne serra barre. Et que le primier office estoppera cy longe come ceo remaine in force. A que fuit responde & resolve per les 2 Chief Justices, & Chief Baron, & le Court de Gards, que le trover dun office nest pas ascun estoppel, car ceo nest que enquest doffice, & leparty greve averatravers aceo come adestre confesse, pur ceo sans question ceo nest pas estoppel; mes quant office est trove fauxement que terre est tenus del roy per service de Chivalrie in capite, ou in verity laterre est tenus del anter segnior, ou del roy mesme in Socage, si le beire sua generall livery, est tenus in 46 E.3. 12. per Mombray & Persey 46 E.3. 12. que il navera sute apres d'averre que la terre nest pas tenus del roy, c. mes ceo nest forsque estoppel al beire mesme que sua la livery & ne concludera son heire: Car issint dit Mowbray mesme, expresment in autiel case in

confession & suer de livery per lissue in tail sur faux office, & la est tenus que les Furors sur novel Diem clausit extremum apres le mort de tiel heire sont alarge selonque lour conscience a trover que la terre nest pas tenus, oc. carilz font jure ad veritatem dicendam, o lour trover est appel veredictum, quasi dictum veritatis: quel reason auxi serve quant le heire in fee simple suist livery sur faux office que les Jurors apres sonmort doi-

livery, cesti que joine ove lebastardin livery ne alledgera bastardy in l'aut',

eth in Pl.Com. Ubi fupra. † It is found for the King, for he is not Duke. Hulmes cafe, Mich.7 Jac.in Curia Ward. Travers de office Eftoppel per fuer de livery,

44 Aff.pl. 35. que estoppel per suer de livery estoppera solement mesme le 44 Aff.pl.35. heire durant son vie: Et in 1 H.A. fo. 6.b. la le case est mysede expresse 1 H.4.6.b.

ent trover selonque le verity, isint est dit in 3: H. 6. fo. 7. per Laicon 33 H.6. fol.7-per que si 2 soers sont trove heires, dont lun est bastard, silz joine in sute de Laicon.

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mes nul Livre dit que lestoppel indurer' pluis longement que durant son vie. Et quant livery est sue per un heire, le force & effect del record de cest livery est execute & determine per son mort & pur ceo le estoppel expirer' ove le mort le heire; mes ceo est destre intend dun generall livery, car special livery ne concludera omnino, come appear apres. Les parols degenerall livery, quant le heire est trove de pleine age, sont. Rex Escaetori,&c. Scias quod cepimus homagium I. filii & hæredis B. defuncti de omnibus terris & tenementis quæ idem B. pater suus tenuit de nobis in Capite die quo obiit, & ei terras & tenementa reddidimus, Et ideo tibi præcipimus, &c. eidem I. de omnibus terris & tenementis prædict',&c. plenam seisinam habere fac',&c. Et quant le heire fuit in gard a son plein age, le breife de livery dirra. Rex,&c.Quia I. filius & hæres B. defuncti, qui de nobis tenuit in capite, ætatem suam co. ram te sufficient' probavit, &c. cepimus homagium ipsius I. de omnibus terris & tenementis quæ idem B. pater suus tenuit de nobis in Capite die quo obiit, & ei terras & tenementa reddidimus: Et ideo tibi præcipimus, ut supra. Quel breif eft le sute del heire & pur ceo coment que touts les parols del breif sont les parols le roy (come tout les breifs le roy (ont) & coment que le breif de livery est generall, de omnibusteris & tenementis de quibus B. pater I. tenuit de nobis in capite die quo obiit, sans direct affirmac' que ascun Mannor in particuler est tenus incapite, & nient obstant que ceo nest forsque prosecution dun breif le roy & nul judgment sur ceo; uncore intant que generall livery est foundue sur loffice, & per loffice fuit trove que divers terres & tenements fuer' tenus del roy in capite, a ceft cause le suer de cest breif concluder le heire sole. ment que suist le livery, & apres son mort les Jurors in novel breif de Diem clausit extremu sont alarge, come est avandit, & si cesti fury trove fauxment tenure del roy, auxi le Segnior de que la terre eft tenus poet travers cest office, ou si terre soit tenus del roy, &c. in Socage, le heire poet travers ceft darrein office, sar per ceo il est greve solement, or ne travers le primer office, or quant le pier suift livery or mort, le conclusion est execute of past, come est dit adevant. Et nota la est un speciall livery, mes ceo proceade de grace leroy, & nest pas sute le heire, & leroy poet grante ceo ou al plein age devant ætate probanda,&c. on al heire deins age, come appiert in 21 E.3.40. et ceo est generall, & ne affirm directment ascun tenure come le generall livery fift, mes ove un, ut dicitur, & pur ceo nest ascun estoppel sans question, Et al common ley speciall livery poet aver estre grant devant ascun office treve, mes ore per lestatut de 33 H.S. ca. 22. est purvien, That no person or persons having lands or tenements above the yearly value of 5.1. shall have or sue any livery before Inquisition or Office found before the Escheator or other Commissioner, mes per un expresse clause in mesme latte, livery may be made of the lands and tenements comprised or not comprised in such offices. Issint fi office soit trove dascun parcell, oc. eeo suffist, & si le terre trove in lossice nexceade 20 l. donques le heire poet suer generall livery apres office ent trove, come est avandit mes si la terre nexceade & l. per annum, donques generall livery poet estre sue sans office ent trove per garrant del Master de gards, &c. Vid. Dier 23 El. 377. quele Roigne, ex debito Justitia, nest lye a cest jour puis le dit Act de 33 H. 8. a graunter speciall livery, mes oft a son election a graunt' special livery, ou a chaser le heir a un generall livery. Fuit

11 E.3.49. 46 E 3.33. 46 Aff p. 47 E.3.11. 19 Aff.p.8. 33 H.6.50. 11 H.6.28. 37 H.8.B.Effoppell 118.7 E.6. ibid.121. See 4.part Inft. Cap. Pardon. Mich. 39 & 40 El.fol.397.

Cap.36. The Court of the Duchy Chamber.

Fuit auxi resolve in cest case que loffice de 35 H.8. ne fuit pas traversable, em fontravers demesne provera que le Roy aver' cause daver gard per cause de gard, & quant le Roy vient al possession per faux office on aut' meane sur pretence dun droit, ou in veritie il nad tiel droit, uncore si appiert que le Roy ad ascun auter droit ou interest a aver & tener la terre, la nul traversera Which case we cest office ou title le Roy, pur ces que le judgement in le travers est, Ideo consideratum est quod manus Domini regis à possessione amoveantur, &c. guage wherein que ne doit estre quant appiert al court que le roy ad droit ou interest daver la terre, Et ove ceo accord. 7 H. 4. fol. 33. in le Countee de Kents case; & que in memory, and apres generall livery sue per le heir de Robert Male le office ne poet estre tra- never hitheito verse per son heir: Et issint auxi fuit resolve per lassistants del court de Gards in Scurfields case in Curia Wardorum. Tr. 8 Jacobi.

have reheafed in the same lanwe reported it when it was fresh was publithed.

What Leafes may be made of lands, sc. within the survey of the Duchy of Lancafter; See the Didinances of the Court of Duchy concerning Leafes to be made, ec. Anno 20 H. 6,

See also Dier Mich, 6 & 7 Eliz. the resolution of all the Judges concerning Mich, 6 & 7 Eliz. Lates made by the Chancelos of the Duchy Chamber. And if the Leafe either in pollettion of reversion be made under the Duchy Seal, Qood Dominus Rexde 1 Provisors, advisamento & affensu concilii Pucatus Lancastriz dimisit, &c. the Lease is good, 2 & 3 Ph. & M. although in truth the Chancelo2 made it, and put to the Seale of the Duchy. For cap. 20. such Leases under the Duchy Seal, of under the Seal of the County Balatine 37 H.S.cap. 16. of lands within the fame, are of as great force as lands of the Crown under the

Albeit by speciall provision and construction, to a grant of lands and tene: 21 E.4.60.60. ments parcell of the Duchy of Lancaster that lye out of the County Palatine, nu. 81. there must be livery of fettin and Attornament, as the cafe requireth, get the Vide Cartam H. grant under the Seal of the Duchy is matter of Record in respect of the dignify de seperatione Duof the person of the king, and needeth no delivery to make it a deed (as deeds bes cat. Lanc. a coreof the perion of the faing, and needed no delivery to make it a deed (and deed and authoritate tween lubjeds ought to have) and if the same be denied, Non est factum cannot part. Anno regui

be pleaded, but Nul tiel Record.

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And if the Bing by his Letters Batents under the Seale of the Duchy both Rot. Parl. 3 H.s. grant a repertion expectant upon an estate for life or years of lands parcell of the nu. 15. fald Duchy lying out of the County Palatine, the reversion both patte maintes Rot. Parl. i E.4. nam to the Patentee by force of the Letters Patents: but he thall not have an Rot. Part. 1 H.7. Adion of Waste, or distraine before Attornament. For this case is like to nu. 2. Seft 1. the cale of a fine between subjects, which is matter of record: and so the hings 2 & 3 Ph. & Mar. Letters Patents under the Duchy Seal are as high a matter of recoad (if not cap. 20. higher then a fine.) And this tendeth both to the honour of the king and the fafe: non omices, &c. ty of fuch as purchase such reversions of the King, that the state of the reversion hould palle by those Letters Patents: otherwise if the Patentee dye before Ror. Parl. 2 H. s. Attornament, the Letters Patents thould be boid, and the validity of the Kings nu.30. grant thould depend upon the pleasure of the lettee, and many inconveniencies 23 H.6.nu.17. hould thereupon follow. And all this appeareth by that great & grave resolution Dier Mic. 6 & 7 of the case of the Duchy of Lancaster reported by Dr. Plowden, that no statute Eliz. ubi supra. now in force both separate the Duchy from the person of the Bing , nor to babo "Lie. Sed. 580. the person of the Bing separate from the Duchy, not to make the Bing Duke 1 part of the Inft. of Lancaster having regard to the possessions of the Duchy, not to after the qualts Plowd. Com. ty of the person of King H. 7. but only that the King Could have to him and to 121. b. his Heirs the faid Duchy leparate from the other possestions; in which case the Vide Rot. Parl. Duchy at the least is joyned to the person of H. 7. and to his heirs, and the 1 H.4.nu.81. acperson of the Ling remain as it did before, for nothing is said to the quality of cord. the person of the king, not to the alteration of his name. And the person of the king thall not be infeebled because the Duchy is given to the king this Beirs, but remain alwayes of full age, as well to gifts and grants by him made, as to ad= ministration of Justice: Whereupon it was resolved, that Leases made by E. 6.

Dier 332. 27 H.8.ca.11.

Rot. Par. 1 H.4. fui 1. P. 10 H.4.fo.7. per prerogat.

parcell of the Duchy (the Royall and politick capacity of the Bing being not als

tered) were not voidable by his nonage: A just resolution, and tending to the lafety and quiet of Burchafers and Farmors, and proveth directly that the Rop. all and politick capacity of the king being not altered (as to thefe polletions) the Letters Patents of the hing of these polletions under the Duchy Seale are of Record : and we finde no opinion in our Books, or any thing in any Record, that we remember, against this. So as the Law concerning this point is, That for grants of revertions by Letters Patents under the Kings Seal of the Duth of Lancafter there must be Attornament for lands out of the County Palatineto make a privity, as in case of a fine to; the action of watte or diffrene: but of lands within the County Palatine, the reversions passe by Letters Patents under the Seal of the County Balatine, both for the effate and for the privity of the act. on and of the diffreffe: and pet the Seal is as high a matter of Record in the one case as in the other. And herewith agreeth the continuall practic in the Court of the Duchy of Lancafter. For if a reversion be granted under the Du the Seal in fee or in tapl, ac. of the lands of this Duchy expectant upon a Leafe toz pears, life, ac.a Wirit in Englich is ufually granted in the Bings name unber the Duchy Seal reciting the grant, and commanding the particular Tenant to attoan: or if it be of a Mannor in postestion, a Writ likewise in English is ule ally granted commanding the Tenants generally to attorn.

The Seal of the Duchy of Lancaster remains with the Chancelo, at Westin. And the Seal of the County Palatine remains alwayes in a Chest in the County Palatine under the safe custody of the keeper thereof. All grants and leases Lands, Tenements, Offices, ic. in the County Palatine of Lancaster shall past under that Seal and no other: and all grants and leases of Lands, Tenements, Offices, ic. out of the County Palatine and within the survey of the Duchy, shall paste under the Seal of the Duchy, and no other: otherwise such grants

and leafes thall be boto by the apparent intention of the Act.

See also Pl. Com. 222. notable matter concerning leases made of lands within the Survey of this Court, the King being within age, 4c, resolved and decreed to be good.

This Touring Palatine was the youngest brother, and yet best beloved of all other, so, it had more Honors, Hannors, and Lands annered unto it, then any of the rest, by the House of Lancaster, and by H. 8. and Queen Mary, albeit they were descended also of the House of Pork, viz. from Eliz, the eldest Daughter of E.4.

* For the great Roialties, Franchises. Liberties, Priviledges, Immunities, Quietances, and Freedomes, which the Duke of Lancaster had for him and his men and tenants, see Rot. Parl. die Lunx post Octab. Sanci Marcini An. 2 H.5. all which are established, ratified and confirmed by authority of Parliament, necessary to be known by such as have any of these possessions.

ide 27 H.8.
cap. 11. for the
feverall Seales.
23 H.8. cap. 3.
Com. of Sewers
under the feale of
the Duchy, and
they be Commiffioners of Record

27 H.8.cap.16.

Dier ubi supra.

Pl. Com. 232.

* Roialties, Franchifes, Liberties, &c.

Rot. Parl. 2 H.5. nu. 30. not in print, and effablished and confirmed Rot. Parliam. Anno 3 H.5 nu. 15. thouse of also the Rops

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CAP. XXXVII.

Of the County Palatine of Chester.

See ing the erection of the County Palatine of Lancaster hath reference to i3 E.3. Vouch.18. the County Palatine of Chester, we have thought good to entreat of it in 49 E.3.9. this place, for that one giveth light to the other.

a We have spoken of the County of Lancaster raised to a County Palatine by ga of Parliament. We chall now speak of a County Palatine created by pre-

fcription.

b The find that Hugh Lupus sonne of the Associated Averenches in Bosmandy by his wife William the Conquerours Sister was the first hereditary Carle of England created by his Ancie the Conquerour Carle of Chester, and in the tille of a Conquerour, Totung; hunc comitate tenendum sible & heredibus it a libere ad gladium, sicut ipse Rextenebat Angliam ad coronam, dedic, to this Carloome is annered the County of Flint in Males.

This is the most ancient and most honourable County Palatine remaining in England at this day," with which dignity the Lings eldest sonne bath been of

long time honoured.

By this general grant this Hugh Carl of Cheffer had Jura regalia within the County, confequently had Comitatum Palatinum without any expresse words thereof, and by force thereof he created Cight Cheshire Barons, which was the strict visible mark of a County Palatine. That is to say, Robert Fitz-Hugh Baron of Palpas, Richard de Vernon Baron of Scibbroke, William Walbank Baron of Pantwich, William the sonne of Nigil Baron of Palton, Hamond de Masly Baron of Dunham, Gislebert de Venables Baron of Bishorton, Hugh the sonne of Norman Baron of Pawardyn, and N.

Baron of Stockport.

By the said generall grant he had not the patronage and tenure of the Bishoprick of Chester, sor thus I reade in the Book of Domesday made in the time of this Hugh Carl of Chester. Cestreshire. Tenet Episcopus ejusdem civitatis de rege, quod ad suum pertinet Episcopatum; totam reliquam terram comitatus tenet Hugo comes de rege.

e Britton satth, Voilons nous que Justices Errant soient assignes de les Chapters oier & terminer en chescun Countye, & en chescun Franchise de 7 ans en 7 ans, & autiel poer voilons que nous d'Chief Justices de Ireland & Cestre eyent,

catifyin this County Palatine, and the County of the City of Cheffer, there is, and anciently hath been a principall Officer called the Chamberlain of Cheffer, who hath, and time out of minds hath had the jurifdiction of a Chancelour; that the sacourt of Erchequer at Cheffer is and time out of mind of man hath been the hancery Court for the said County Palatine, whereof the Chamberlain of Cheffer is Audge in equity. He is also Audge of matters is the Common law within the said County, as in the Court of Chancery at Westm; so, this Court of Chancery is a king Court.

There is also a ¹ Aice. Chamberlain, which is the Deputy of the Chamberlain. And there is within the same a Justice called m the Justice of Chester, who hath jurisdiction to hear and determine matters of the Crown, a of Common Pleas. Of sines and recoveries levied and suffered as well within the County Palatine of Chester as of the City of Chester. See the statutes of 2 E.6. ca. 28.& 43 Eliz. cap. 15: But of these and other matters concerning this County Palatine we have thought good to set down the resolution of sour reverend Judges (whom we knew) upon view of Records and epidences, and mature deliberation thereupon

in writing, in thefe words.

19 H.6.12. 36 H.6.33,34. 12 E.4.16. a A man may have a County Palatine by Prefcription. 2 E.4. 17,18.23.12 E. 4. 16. 21 R.z.ca.g. Regift. 17.2. b This Lurus did bear Azur a head of a Woolf crafed,argent. In feefimple. 121 R.z.cap.g. 21 R.z.ca.9. 17 E-4-Ca.1.

Thefe Barons had within their feverall Courts conusans de omnibus placitis & querelis in curia comitis motis, ex cepeis placitis ad gladium ejus pertinentibus, which you may fce at large, Rot. Inspex. Pat. An. 18 H.6.parte 2. m.34. c Brit.f.s.b. 27 H.8.cap.5. d Chief Justice de Cheffer. e 27 H. 8.c. 5. f Chamberlain of Chefter. g Court of Efcheb Chacery Court. iAt the Common & A mixt Court. Wice Chaberlain. m The Justice of Cheffer .

Sir James Dier, Weston. Harpur. Carns. 10 Febr. 11 Reginz Elizab.

The opinion of Sir Iames Dier Knight, Chiefe Justice of the Common Pleas at Westminster, Richard Weston and Richard Harpur Esquires, two other Justices of the same Common Pleas, and of Thomas Carns Esquire one of the Juflices of the Pleas to be holden before the Queens Majefly, declared and prefented to her Highnesse the 10 day of February Anno Dom, 1568, by vertue ofher Majesties Letters to us directed the second day of the same month concerning the jurisdiction and liberties of the County Palatine of Cheffer. and the authority of the Chamberlain, and his Office there: and concerning the controversie between the Lord President and Councell in Wales, and the faid Chamberlains Office lately grown upon Thomas Radfords case exhibited unto us: as enfueth.

aking H.7.made it a County of it felfe. Camden. 459. 1. By prescription

First, by that which we have feen and considered, the County of Cheffet (wherein a the City of Cheffer is now, and by a good time past hath been a County of it felfe) of bery ancient time before the reign of hing H. 3. bath been, and pet is a County Palatine, with other members thereunto belonging: and fo from time to time hath been received and allowed in the law. And therefore the lawes, rightfull ulages, and customes of the faid County Palatine are to be preferbed and maintained.

The Chamberlain of Chefter.

It further evidently appeareth, that by the like time of antiquity and continue ance, there bath been and pet is in the faid County Palatine one principallo bead Officer called the Chamberlain of Thefter, who hath, and ever had all jurif diations belonging to the office of a Chanceloz within the faid County Walatine.

The Juffice of Chefter.

And that there is also within the said County Palatine a Instice so; matters of the Common Pleas, and the Pleas of the Crown, to be heard and determinen within the faid County Palatine, commonly called the Inflice of Cheffer.

Error, forein plea and forcin youcher.

The alfo fee that all pleas of lands of tenements and all other contracts, caples, and matters riling and growing within the fame County Walatine are pleade. ble, and ought to be pleaded, beard, and judicially determined within the fain County Palatine, and not elle where out of the late County Palatine. And if any be pleaded, heard, or judged out of the faid County Palatine, the fame is bold, and coram non Indice, except it bee in case of Erroz, Fozien plea, or for rein boucher.

Treason & error

THE also see that no inhabitant of the same County Palatine by the liberties. lawes, and ulages of the faid County Palatine ought to be called or compelled by any Warit of Proces to appear of antiver any matter of cause out of the same County Palatine for any the causes aforesaid, but only in causes of treason and erroz. And the Queens Writ doth not come, noz ought to be allowed or used within the faid County Walatine, but under the Seal of the faid County Pala: tine, except Wirits of Proclamation by the fratute of E. 6. Anno regni fui primo.

It doth further appear unto us by good matter of Record to us theived, that the Court of the Erchequer at Chefter is, and by the time of antiquity and continuance afozefaid bath been used as the Chancery Court for the same County Palatine, and that the Chamberlaine of Cheffer is the chief Officer and Judge of that Court, and that he is, and time out of mind hath been a confervator of the peace by bertue of the same office, and bath like power, authority, preheminence, jurifdiction, execution of law, and all other customes, commodities, and advantages perraining to the jurisdiction of a Chancelour within the said County Par latine of Theffer, as the Chancelo; of the Duchy of Lancaffer hath used, had and ought to have used and executed within the said County Palatine of Lancaster: which more evidently appeareth also by the understanding of the first grant made by King E. 3. to John his sonne then Duke of Lancaster, whereby he made the fame County Palatine of Lancaster, referring the faid Duke to have his Chanceloz, liberties, and regall jurisdiction to a County Palatine belonging, adeò libere & integre, ficut comes Cestria infra eundem Comitati Cestria dignoscitur

Seal of the County Palatine.

See the grant before. obtinere.

Court of the Exchequer is the Chancery Court. Chamberlaine

Judge of that Court. A Confervator of the peace.

Vice-Chamber laine.

Also it appeareth unto us that the Aicechamberlaine did lawfully and orderly commit to prifon Thomas Radford named in the case presented unto us, for that

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be refused to put in sureties of the peace within the faid Erchequer upon Affidavit mabe in that behalf. And that the proceedings of the Councell of the Warthes touching the enlargement of the fato Radford from the faid impaiforment. and also their further order and dealing against the faid Aicechamberlain was, and is without fufficient authority, and contrary to the jurisdiction of the office of the faid Chamberlain, and the ancient laws and liberties of the fame County

And we doe also affirm that the fratute of 34 and 35 H.S. called the Dybinan. The President & mot Wales, whereby the authority of the Lord President and Councell with: in the Dominion and Principality of Wales and Parches of the fame is eftahithed, and hath the force of a law, for or concerning the determination of canles and matters of the fame. comprehendeth not the Counties of Chefter, and the City of Chefter, because the same Counties of Chefter and the City of Thefter be no part no; parcell of the faid Dominion o; Principality of Wales, o; of the parches of the fame.

Between Dir John Egerton Plaintif, and William Carl of Derby Chamberlain of Thefter cothers Defendants, for the truft of an interest of a tearm in imbs in the County of Chefter, thefe points were refolved by the Lord Chances lar and by the Thief Justice of England, Justice Dodderidge, and Justice Winche, whom the Lord Chancelo; called to be his Affiftants as followeth.

Fira, that the Chamberlain of Chefter being fole Judge in Equity, or his Deputy cannot becree any cause wherein he himself is party, for he cannot be ludex in propria caula, but in that case he may complain in the Chancery of Eng.

Vide 21 H.3. breve 881. in rationabili parte versus Comitem Cestria de ha- 21 H.2. bre 881. reditate D. quondam Comit' Cestriz. Comes dicit quod noluit respondere de terra in Com' Cestriz ubi brevia domini regis non currunt extra libertates suas nisi Cur' consider', & Consideratum suit per curiam quod respondeat.

2. If the Defendant divell out of the County Palatine, if any of the County Dalatine have cause to complain against them for matter of Equity for lands or goods within the County Palatine, the Plaintif may complain in the Chance 18 Aft. 182. mof England, because he bath no means to bying them to answer, and the Court 13 E.z.tit. jurisd, of Equity can bind but the perfon, for other wife the lubjed thould have just cause 5 8.3.30.38 H.6. of fuit, and thould not have remedy : and when particular Courts fail of fu- 8 E.4.8.11 H 4. flice, the generall Courts shall give remedy, ne Curix regis deficerent in justi- 27.8c. tia exhibenda.

3. It was refolved, that the King cannot make any Commission to hear and determine any matter of equity, but matters of equity ought to be determined in the Court of Chancery, whose jurisdiction therein have had continuall allowance, and fo was it resolved in Perocscafe.

4. Apon confideration had of the faid Certificate of the Lord Dier, and the faid other Audges, it was refolved, that for things transitory though in truth they were emergent within the County Palatine, pet by the generall rule of law, the Plaintif may alledge thefe to be done in any County where he will, and the Defendant cannot plead to the jurisdiction of the Court, that they were done, to. within the County Palatine: but if the Plaintif Suppose the transitory cause of action to be in the County Palatine, that may be pleaded to the jurisdiction, otherwife it is of things locall.

Anoffice found by Commission in the nature of a Mandamus issuing out of the Chancery at Meltminster before the Commissioners in Com' Celtrix for lands holden in Capite in the same County, was holden vold per confilium curix Wardorum, for it ought to be by writ or Commission out of the Erchequer in the County Palatine, which is the Court of Chancery there.

If an erroneous judgment be given befoze the Chamberlain in the Erchequer in any matter wherein he proceedeth according to the course of the Common law the wait of @rroz hall be directed Camerario feu ejus locum renenti; but if the judgment be given before the Justice of Chester, then the writ is directed Justiciario

Councell of the

Councel of Wales and the Marches of the same. The Counties of Chefter, and the City of Chafter no part of the Marches of Hil, 11 Jac, in the Chancery,

Vid in the Charter of Durham, Anno 30 E.1. Coram Rege.

6. 7 H.6.37.

" See this case in the Chapter of the Chancery, Fa.87.

See in the Chapt. of the County Palatine of DurRegist. fo. 17.a.
34 H.6.42.
6 H. 4.9. Lib. Intr.
Rast. 272.
Dier 15 El. 320,
321. Dier 18 El.
345,346.
Note these generall words extend as well to the Chamberlain as to the Justice by the rule of the Regist. Ubi sup.

Infliciario Ceftriz five ejus locum tenenti. And note that in a watt of @ren to the * County of Chefter, day shall be given by folong time, that three Counties may be bolden before the return of the fame writ in the mings Bench, which is four months, by which time the Justices of Lieutenant within the same Coun. to may redrefle the error, if they will, and this by the mages of the fame County; But in a writ of Error upon a fine they have no luch power : and the Plaintit ought to bying the wait of Error to the next County after the Tefte, and there it shall be read, Coram Judicatoribus ratione tenurarum suarum ibidem: and the Plaintif thall affign the error without praying procede against the Aenant or Defendant, but only to pray Judicatores to examine the error, and iferror in found they may advile thereon, or prefently reform it, and award restitution, or by their discretion they may award processe returnable at the nert County is gainst the tenant of Defendant ad audiend' errores, (which is reasonable, and necestary to be granted) and fo return their own judgment giben by them or their Debeceffor, and then there is an end of the bulineffe , and the Record thall re main there without removing; and by this means they thall fave an hundred pound forfeiture to the Bing. But if they affirm the judgment which iserrone. ous, their affirmation and the IR ecord ought to be removed into the Lings bench. if the party Plaintif be grieved therewith : and if their affirmation be errone ous, although their first judgment was given by their Pzederestozs, notwith franding they shall forfeit the hundred pounds. And the party grieved by their affirmation or reperfall ought to bring a speciall writ of Error peremptop, which shall not be examined by them, for that all this is to be understood where erroz in law is alligned : for upon the wait of Erroz firft brought, if any erroz in fair be alligned, as death of one of the parties, hanging the plea, or the like, which is tryable by the Country, they cannot hold plea thereof, but return the Record, with the wait into the kings Bench. Reither can they hold plea of a release of errors after the judgment or the like, for they are only to eramine the errors of the Record or procede, and all this both notably appear in our books. But if no such usage had been the Record ought to have been removed by the wait of Error into the Kings Bench, as it ought to be in other cales.

Egerton the Autens Solicito; moved in the Chancery to have a Certiorari to the County Palatine of Chefter for the removing of a Record of Affile taken in that County between Cocton and others Plaintifs, and Venables and others Defendants, wherein the Recognitors of Affile gave a falle verdict, and to the intent, that a writ of Affaint might be brought in the Hings Bench, a Certiorari was prayed. And it was doubted, whither an Affaint did lye in this case, out of the County Palatine. And by the opinion of Wray and Anderson Chief Institutes, and Manwood Thief Baron, upon consideration had of the statute of 23 H.8. cap. 3. whereby it is enaded in these words. That all Actains hereafter to be taken shall be taken before the King in his Bench, or afore the Justices of the Common place, and in no other Courts; They resolved and so certified the Lord Chancelor that so, a satis verdict given in the County Palatine of Chester, the Attraint ought to be brought either in the Kings Bench or Common place, and not in the County Palatine of Chester, the

Hil.29 El. Coram rege, Huddle l'ós case, in Brevide errore.

ted for the removing of the Record.

Hil. 29 Eliz, Coram Rege. The case was that Dueen Elizabeth by her Letters Patents granted the custody of the Castle of Chester to John Paston, and Richard Huddlestone Esquires, and the survivor of them; John Paston died, and in a Scire fac' against Huddleston in the Erchequer before the Chamberlain, (Glasser then being Deputy Chamberlain) to repeat the said grant, ac. judgment was given against Huddleston that the Patent should be admilled and cancelled, and hereupon Huddleston brought his writ of Error. And it was objected that before any writ of Error ought to have been granted. Huddleston ought to have such the Lucen by petition to have a writ of Error according to the book in 23 E.3. so 24. But it was answered, that here in this case no inheritance was recovered by the judgment, and it Huddleston that claimed the

Vid. 3 El.Dier 202.b.Bendloes 3 Eliz.

Hilag Eliz.

23 E.3.fo.24. F.N.B.fo.

office but for tearm of his life thould be driven to his petition, wherein great des lap might beuled, his life might end befoze he could obtain his weit of Erroz, therefore the wait of Error in this case was to be granted without any petition: and of that opinion was the whole Court of the Kings Bench, and to the wait of Erroz did Cand.

Judices & Sectatores Com' Cestrix non consueverunt apponere sigilla sua a-

licui recordo in prasentia Justiciariorum.

Before the fatute of 34 H.8. neither the County Palatine of Cheffer fent 34 H.8. cap. 13. Bnights to the Parliament, noz Citizens out of the City of Chefter.

Before the statute of 27 H.8. the Lord Thancelor of England appointed no 27 H.8.ca.s. Auftices of Peace, Justices of Quorum of Gaoldelivery within the County of

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The Mannos of C. in the County of Posts was holden of the Posince, as of 22 E.4. Jurisd. 61. the County of Chefter, and that all pleas reall and personall riling within the Lib.inc. Raft. fo. County, or within any parcell of land holden of the County ought to be impleas no within the lato County Palatine: For the King by his Letters Patents map ordain a Court at Pork, or in any other County which wall have jurisdictim through the whole Realm, and fo it was refolbed.

The City of Cheffer was made a County of it felt by Bing H.7. by Letters Lit. Pat. 6 Apr.

Batents, dat. 6 Aprilis 21 of his reign.

See the statute of 5 El. cap.23. Concerning waits of Significavicand Excom' apiend'. See the fatute of 18 El.cap. 8. making of more Juftices then one.

By the ftatute of 8 H. 6. cap. 10. It is provided, That upon every Indiament or Appeal by which any person dwelling in any other County then there where such Indictment or Appeal is, or shall be taken of treason, felony, and trespasse, &c. beforeany Exigent awarded, &c. that after the first writ of Capias, another writ of Capias shall be awarded directed to the Sherif of the County whereof he is or was supposed to be conversant in the Indictment, &c. otherwise the outlawry to be void.

In an Appeal in the Kings Bench in the County of Dorlet where the Ap. pellee was demurrant at Cheffer, processe continued untill he was outlained without any Capias into Cheffer, tit was objected that the Capias could not iffue into Cheshire, for it is a Franchise into which the Kings writ runneth not. Bolden at the Common law for certain things a writ thall iffue to the Franchife of Thefter as for treason, the Catute is made by Authority of Parliament, and is generall as well within Franchise as without, and therefore the Ad being generall thall be taken generally to extend into Cheffer, Quod conceditur, but this is a leading cafe.

Vid. Lib. Int' Coke, fo. 230, 231, 232, & 296, 297. See an Act of Parlin

ment, Rot, Par. 9 H.4. nu.45. touching adjoinment in pleas.

Parchig E.z. Co. ram rege Rot. 32.

Si teneatur immediate or medi-

21 H.7.

5 El.cap 23. 18 El.cap.8.

8 H.6.cap. 10. Vide cap. 13.

19 H.6.1,2.

CAP. XXXVIII.

Of the County Palatine of Durham.

Dis is also a County Palatine by prescription parcell of the Bishoprick of Durham, which was first raised, as it is said, soon after the time of William the Conqueror.

Pet I find that this County Palatine bath been questioned but with evil success.) For at the Parliament holden and it H.6. Thomas Bishop of Durbam prayed a Commission under the Great Seal to certain there named, who by vertue thereofs and inquired at Partiepole being within his County Palatine of the rights of the County Palatine with all the Dependants. Whereup, on Sir William Fure Unight the Kings Atturny made divers objections, that the Bishop ought to have no County Palatine neither liberties royals. On the contrary part the Bishop produceth his proofs, and the matter on both partisers outly debated. In the end judgment was given in Parliament so, the Bishop, and that the said Inquisitions returned in the Chancery or elsewhere should be void. See the Record being very long, and yet worthy the reading.

Tahen the Bilhop himself, that ought to doe suffice and right to others will be injury and wrong within his County Palatine, a that he cannot be a Judge in his own cause: See a notable Record intituled thus. Recordum coram domino rege porrectum per manus Willielmi de Beresord & Rogeri de Heigham Justiciar' domini regis ad querelas infra libertatem Episcopatus Dunelm' audiend' & terminand' affignat' in has verba.

Placita apud Duneim' coram Willielmo de Bereford & Rogero de Heigham Justiciariis domini Regis ad veteres querelas Ricardi Prioris Duneim' & alionum hominum Episcopatus ejusdem domini regis prius porrectas & non determinatas audiend' & terminand' assignat'.

Ricardus de Hoton Prior Dunelm' queritur de 'Anthonio episcopo Dunelm',&c. The record is long, but therein you shall observe severall plaints of the Prior against the Bishop, whereupon issues are joyned, and verdies given against the Bishop, and judgments given worthy the reading. By which Record it appeareth that the Bishop had within the County of Durelme Regalizatem suam,

I find also another Record in the same Bings time, viz.

Placita coram domino rege apud Westm' de Termino Sancti Michaelis Anno regno Regis E. filii regis Henrici 33. finiente, 34. Ro. 32.

Dominus rex mandavit breve suum Episcopo Dunelm' in hac werba. Edwardus dei gratia rex Anglia, dominus Hibernia, & dux Aquitania venerabili in Christo patri A. eadem gratia Episcopo Dunelm' Salutem. Cum Odeliva filia Ricardi de Hurchemorth, Matild' de Swyneburne, & Ricardus Bouche, & Agnes uxor ejus arraniaverunt quandam Asisam mortis antecessoris infra libertatem vestram Episcopatus pradict', * coram Lamberto de Trykingham, Guyehardo de Charroun, & Petro de Thoresby per breve vestrum versus Galfridum fil' Fohannis le Maschun de Herterpole de uno mesuagio, sex tostis & una carucata terra cum pertin' in Hurcheworth Brian. Ac pradictus Galfridus Fohannem le Maschun de Herterpole intrinsecum versus pradict' Odelivam, Matildam, Ricardum & Agnet'

10 E.3.41. 115. 17 E.3.36. 5 R. 2. Triall 54. 13 H.4. Vouchee 39. 11 H.4.40. 18 H.6.33,34. 19 H.6.12.52. 21 E.4.8. 1 Mar. ftat. 2.ca. 2. Rot. Par. 11 H.6. nu.23. See Rot. Parl. Pafch. 21 E.t. Rot.g. a notable record for the I berties of the Bithop of Durefine.

Pafch.30 E.1.

Northumb. Dunclin.

* This was Anthony Beak, of that flate and greatnesse as never any Boshop was, Woolfey except.

Mich. 34 F. 1. Coram rege Rot. 32.

"Justices of the Bithop. Per breve vest ú.

Cap.38. The County Palatine of Durnam.

inde vocaverit ad warrant'. Et idem Johannes ten' pradict sidem Galfido warrantizans Simon' filium Simon' de Mora intrinfecum versus cofdem Odalivam, Matild', Ricardum & Agnet' ulterius inde vocaverit ad parran'. Ac idem Simon' eadem ten' eidem Johanni Warrantizans inde vocaverit ad marran' versus cosdem Odelivam, Matild', Ricardum & Agn' per auxilium cur' nostra Aymerum de Rocheford & Julianam uxorem eius, Johannem Swayne, & Aviciam uxorem ejus, & Thom' de Fishborn Forein Voucher. juniorem forinsecos, qui terras aut tenementa infra libertatem pradictam ant alibi infra districtionem vestram non habent, per que per ballivos vefros libertatis pradict' ad warran' illam faciend' distringi possum, ut accepimus. Nos attendentes expediens effe & necesse quod nos super recordo o processu Asisa pradicta plenius certioremur, ut partibus pradictis, quod justum fuerit in hac parte ulterius fieri faciamus. Vobis mandamus quod inspectis recordo & processi pradict, si vobis constiterit ita esse, tunc recordum & processum Asifa pradicta cum omnibus ea tangentibus nobis sub figillo vestro distincte & aperte mittatis & hoc breve, Ita quod ea habeamus à die Sancti Michaelis in 15 dies ubicunque, &c. partibus eundem dim prafigentes quod fint ibi statur' & receptur' quod curia nostra consideraverit in hacparte, ut nos finito placito warran' pradict' in curia nostra record' & proces' totius negotii memorati vobis remittamus ad procedend' in codem [ecundum legem & consuctudinem libertatis pradict. T. me ipfo apad Wyneling feld 13 die Julii Anno regni nostri 33. Virtute cujus brevis prædictus Episcopus misit recordum & processum in hæc verba. Placita de Afifis apud Dunelm' coram Guyehardo de Charroun & Petro de Thorefby Justiciar' assignat', associat' sibi L. de Trikingham die Martis proxim' post clausum Pasch. Anno regni regis E. 33. & promot' domini A. Dunelm' Episcopi 22.

Asis' venit recognitur' si Ricardus de Hurcheworth pater Odeliva fil' Dunelm. Ricardi de Hurcheworth & avus Matilda de Swynesburne, & Agn' ux - Pater Odelivæ or Ricardi Bouche fuit seisitus in dominico suo ut de feodo de uno mesuagio, sex toftis et una carucata terra cum pertin' in Hurcheworth Brian die quo,&c. Et si,&c. qua Galfridus fil' Fohannis le Maschun de Herterpole. Et sciendum quod tertia pars pradict' tenement' excipit' eo quod pradict' Odeliva alias comparuit in curia , & modo non sequitur pro parte sua, oc. Et Galfridus alias venit & dixit qued ipse tenet pradicta tenementa ad terminum vita sue ex dimissione Johannis de Maschun de Herterpole & informa pradicta vocavit ip (um Johannem ad Warran' Simon' fil' & haredem Simonis de Mora, qui modo venit per Sum' & ei warrantiz'. Et vocat ulterius inde ad warran' per auxilium cur' hie & cur' domini regis Aymerum de Rocheford & Julianam uxorem ejus filiam & unam heredum Nicholai de Swynburne, Johannem Swayne & Aviciam uxorem ejus filiam & alteram baredem pradicti Nicholai, & Thomam de Fishburne filium Christiana cohared' pradict' Juliana & Avicia sum' in Com' Northumb. Et quia curia ista juisdictionem in pradict Aymers & aliis warrant', &c. qui exec' datus est dies partibus hic die Martis proxim' post festum Sancti Jacobi Apostoli. Et dictum est pradicto Simoni quod sequatur versus Warrant' suos per auxilium cur' domini, prout sibi viderit expedire, &c. Postea ad diem illum ven' tam pradict' Matilda, Ricardus & Agn', quam pradict' Simon, Et iidem Ma-

tild et alii petentes petunt quod procedat ad Asisam capiend per defaltam

Si vobis conflice.

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pradict Simonis ex quo quod nondum secutus fuit versus warrantes, &c. Et super hoc idem Simon profert breve domini regis hic de mittendo recordum et processum Asifa pradicta eidem domino regi à die Sancti Michaelis in quindecem dies ubicunque, &c. que quidem recordum & processus, et etiam breve domini regis pradict' quod habuit record' consut' por pradict' Matild', Ricardum & Agnet' domino regi mittitur juxta tenorem brevis sui pradict'. Et idem dies prafixus est partibus coram eodem domino rege ubicunque, &c. Et pradict' Ricardus & Agn' po: lo: suo pra. diet Matild' in Placito pradict' &c. Ad quem diem coram ipso domino rege venerunt partes, & quia constat per recordum pradict' quod pradict vocati ad Warran' funt extrinseci, & quod vocati funt ad Warran' per auxilium curia domini regis qui est superior dominus totius regni, & qui omnibus & singulis de regno suo justitiam facere tenetur, & maxime in defectu aliorum per quorum defectum idem dominus rex vocatur in auxi. lium; Praceptum est Vicecom' Northumb' quod summoneat pradict' Aymerum de Rocheford et Julianam uxorem ejus filiam & unam hared Nicholai de Swyneburn Johannem Swayne & Aviciam uxorem ejus fil et alteram hared' pradict' Nicholai, & Thom' Fishburn fil' Christiana coheredis pradictarum Juliana & Avicia, quod fint coram rege à die Santi Hilarii in 15. dies ubicunque, &c. ad warran', &c. Idem dies dans est petentibus et similiter pradict' Simoni tenen' per Warrant' in Banco, &c. Idem Simon po: lo: suo Walterum de Middleton et William de Burgham loquela pradict', &c. Et quia pradictus Episcopus non misit breveoriginale simul cum pradict' recordo, et necesse est pradict' breve hicmittat'; Mandatum est pradicto Episcopo vel ejus locum tenenti, quod pradict breve domino regi mittant, ita quodillud habeant ad prafatum Terminum, &c. Ad quem diem prad' Simon tenens per warran' venit; et pradict Matild' de Swynburn, Ricardus Bouche, et Agnes woor ejus petentes non venerunt, nec, &c. Ideo pradict' Simon inde sine die. Et pradict' Matilda, Ricardus et Agn. et plegii sui de prosequend. in misericordia, &c.

Pasch.46 E.3. Coram rege Rot.43. In an information against Thomas Bishop of Durham so, a contempt in not certifying a Record, he pleads that he is Comes Palatinus, & dominus regalis enjustam terræ vocat the Bishoppick of Durham, & habet omnia Jura regalia quæ ad Comitem Palatinum & dominum regalem pertinent, per se, Justic, & ministros suos exercenda.

In this County Palatine there is a Court of Chancery which is a mint Court both of law and equity, as the Chancery at Aestminster: Herein it differeth from the rest, that if an erroneous judgment be given either in the Chancery upon a judgment there according to the Common laiv, or before the Instices of the Bishop, a writ of Error shall be brought before the Bishop himself, and if he give an erroneous judgment thereupon, a writ of Error shall be sued returnable in the Lings Bench.

But now let us fee what we find in our books concerning this County Pala-

Mich. 14 E.3.tit. Error 6. F.N.B. 21.g. 8 El.Dier 250. In a Formedon in Durham the tenant pleaded the warranty of the Auntoftor of the Demandant, with affects in a forain County, whereupon the Court awarded that the tenant should go quit without day. And the Demandant upon this judgment such a writ of Error before the Bishop, and assigned so Error, that the Instices awarded that the tenant should go quit without day, where they ought to have continued the plea by adjornment untill the Record had been remoded. And sor this error the Bishop reversed the judgment, and day given to the parties before his Instices where the plea was pleaded. At

jubich day the tenant was efformed and a day given over. At that day a moth came to remove the Record in the Common Bank, and a day given to the parties in the Common Bank, and this proceeding of the Billop thas neededing to the ufage there, And after by the advice of the whole Court a Venire fac' timed out of the Common Bank to try the iffue jopned at Durbam.

If a man in the County Palatine of Durham bouch a fozeiner to warranty, the demandant may counterplead that the bouchee bath affets within the County

Palatine for the delay.

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In a Wirtt of Trefpalle Des biens emportes deins un certeine ville, the be: fendant faid, that the place where the plaintife supposed the taking away, is within the franchife of the B. of Durham, where the kings Writ runneth not, but is a franchife Royall. Judgement de breife. Wibereunto the plaintife fait, that the defendant came in by diffrete, and fo the Court feifed of the plea. Finchden giving the rule of the Court faid, the Court is not in this case seised of the plea, but that foodlo be where conulance or tranchife to challenged, which lieth not in this cale, but the Bithop hath franchife royall into which the Kings Wirit mmeth not , and therefore for not benying of the exception the Wirit abateb. Aote the Towne wherein the transitory trespalle was alledged by the plaintife mag within the County Palatins.

If the tenant bouch two, one within the County Palatine of Durbant, and the 19 H.6.52. other at the Common law, fummons thall be awarded to the Load of the County Balatine, commanding him to fummon the vouchee to be at a certain dap before the Austices here to try the warranty : in this case if the tenant recover in bas we, the Bullices thall write to the Lord of the County Palatine to render in

balue, quod fuit concessum.

Dee Dier 12 El. where he that hath jura regalia thall habe forfeiture of Wigh Treason, whereof Vide before in the Chap. of the County Palatine of Lanc,

If the one be bouched, and the tenant prayeth that he may be fundamened in the County of Pork, and the County Palatine of Wurham, the Boucher Chall fland, for if he be funmoned in the Country of Pork, it fufficeth.

Dominus Rex habebiseustodiam omnium terrarum corum qui de info tenent in capite per servicium militare, de quibus ipsi tenentes suer seisti in dominico fuo ut de feodo die quo obierunt de quocunque tenuerunt per hujusmodi servieium, &c. exceptis feodis Episcopi Dunelm' inter Tine & Teles

1. This exception extendeth not to the body. 2. If the Billion did after this flatute purchase any Seigniory between Tine and Tele it extendeth not to that. 3. That before this statute, the Bing ought to have had the wardship of the lands, as appeareth in our Books, contrary to Poles opinon in this cafe.

The third Chapter of the faid statute of prarogativa regis both give the king

phmer feifon, tc. without any faving of the Bithop of Durefme.

Sir Thomas Gray Unight was leifed in fee of the Manney of Chillingham in the County of Porthumberland holden of the Queen by Unights Service in Capite, and of the Manno; of IR offe in the County Palatine of Durham holden of the Bilhop of Durham by Unights fervice in Capite, and died feiled of both, his some and heir of full age. And although on the behalfe of the Billion some pendents were thewed in like case, pet the two Thief Justices Popham and Anderion prima facie bid hold, that the primer feifon of and for the Manner of Rolle belonged to the Bing.

The Tolon of Crehe in the County of Pork holden of the Bilbon of Durham. 21 E. 4. jurid. st. hall be impleaded within the County Palatine of Durham, and in no other

place: and so is the Mannos of Howden in the County of Mozk.

The king thall have the temporalties of the Bithop of Durham, and ton a 5 R. 2.triall 94. Church that becommeth boid the Bing thall have a Quare Impedic.

Dee the statute of 5 El.ca.23. concerning the witts of Significavic and Excom' 5 El.ca.23.

capiendo.

It was holden by all the Indices, that if a man be furety for another to keep at E.3.49. the peace, and after he breaketh the peace, and the ferrety hath lands in the Regist. 153.

32 E.z. Vouch. 97. 14 H.6.fo. 3.

13 E.3. Voucher 165. 45 E.3.17. Vid. 19 E.3.triall 66. 19 E.3. jurisd. 29. 33 E.3.ib.57. 45 E.3. Vifne 50.

Dier 12 El. 188. which was the case of James Pil-kington Bishop of Durham. 13 H.4. Vouch. 39. 36 H.6.ib.49. aPrzrogativa reg. cap.i.

16 E.g.tit Livery

Glanv.li.7.c.20. Brad.1.2.fo.85. 9 H.3.prær.25. 21 H.3.ib.26. Prær.regis ca. 3. Trin. 38 El.in Curia Wardorf.

1 E.4.10. County F.N.B.132.

Cap.20

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County Palatine of Durham, the King thall command the Bithop of Durham or his Chancelo; to doe execution. And so it is in the other Counties Palatines. In the same manner it is of a Statute Staple, &c. Recognizan. ces, &c.

Vide 5 E. 3. fol. 58, 17 E. 3. fol. 56, Rot. Parl. 7 E. 6, Rot. Pat. 7 E. 6. part. 8.

** Mar. cap. 3.

CAP. XXXIX.

Of the Royall Franchise of Ely.

33 H 8.cap. 10. 5 Eleap. 23. Is divers statutes it is named the County Palatine of Cly. King H.1. in the 10 year of his reign, of the rich Monastery of Cly made a Cathedrall Church, and of the Abby made a Bishoppick, and so, his Dioceste assigned unto him the County of Cambridge, which before was within the Dioceste of Linc: In recompence whereof Robert Bluer Bishop of Lincoln, then Chancelor of England had to him and his Successors three Mannors, parcell of the possessions of the Abby, viz. Spaldwiche, Bicklesworth, and Bugden. And so, the Chapter of this new Bishop, he instituted that there should be a Prior and Covent. But in respect of the Revenues, sor that their principall Mannors were granted a way, the number of Monkes being 70. were brought down to 40. And King H.1. granted to this new Bishop and his Successors Jura Regalia within the Alle of Cly. But the said Prior and Covent were in the reign of H.8. suppressed, and in stead thereof a Dean and Prebendaries were raised to be the Chapter of the Bishop, and a Granumar School sor a Master and 24 Scholars.

This royall jurisdiction the Bilhop hath by prescription grounded upon the said grant as well in Pleas of the Crown, as in Common pleas before his In

Aices

The liberty of the Bithop of Ely hath been anciently allowed by the Court of Common pleas for lands in Wisbich, within the Mae whereof a Pracipe quod reddar was brought.

Again, Allocatur libertas Episcopo Eliensi pro terris infra Insulam de Ely prout alias, scilicet in rotulo Martini de Littlebury & sociis suis annis 55 & 56 H.3. Anno 14 Regis nunc coram Thoma de Wayland & sociis suis, Item

Mich, 16 Regis nunc. Rot. 27.

In Arespalle the Desendant pleaded an arbitrament made at A. in the Ale of Ely, and thereupon issue was joyned, the Plaintis shewed that Ely is a Franchise Royall, they of the Isle shall not be empannelled out, and prayed a

Venire fac'to the Sherif of Cambridge.

Affine being joyned and the Aisne to come out of Aly, the Antry is, Super quo prædict' (querens) dicit quod E. prædict' est infra Insulam Eliens', quodque Episcopus Eliens' talem habet libertatem in Insula prædicta, quod nullus Justiciar' nec aliquis minister domini regis Insulam illam ingredi debet ad aliquod officium ibi exercend', nec liberi tenentes nec residentes in eadem Insula illam ingredi debent ad aliquam Juratam extra Insulam illam faciend', & petit breve domini regis de Venire fac'hic 12. de vicineto de Soham, quæ est propinquior Villa in prædict' Com' Cantabr' extra Insulam prædict' adjacen' prædict' Villæ de Ely ad triandum exitum præd'. Et quia videtur Iusticiariis his quod petitio illa est rationi consonans, Ideo præcept' est Vic' Cant' quod Venire sac' hic tali die 12. de vicineto illo, per quos, &c.

Sentence was given in the Ecclesiasticall Court in Cambridge, and the Defendant was summoned at Hadington in the Ale and Franchisc of Cly,

Trin.3 E.T.Rot. 62. Coram Rogero de Seryton & fociis fuis Juficiariis de Banc. Trin.16 E.T.in Comuni Banco Rot.89.Cant.

3 H.6 triall 2.

Lib. Int. Raff.fo.

46 E 3.8.

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as he might be, for where the action is intire, and not feverall, whereof part is within the Franchife and part without, the Franchife thall not be allowed. As if one take a man in a place at the Common law, and carry him into a franthile and there impailon him, this Court thall hold plea, quia magis dignum trahit ad se minus dignum. Et siede similibus.

In an Action of Account against one as Baplif of lands in H. and A. and H. 4 E.3. conusans is within the Franchise of the Ide of Ely, and because the Plaintif might babe charged the Defendant as Bailif of A. and it is no reason that by joyning of them in one Writ to differit the Bilhop of his Franchile, the Writ abated.

5 E.a.conulans 68. 31 E.4.35.

74. 20 E 3. ibid. 85. 49 E.7.24. 1 See 23 E.3.12.

CAP. XL.

Of the County Palatine of Pembroke.

This was an ancient County Palatine within Wales, and the Carle Rot Parliamenti, mas Comes Palatinus, and had Jura regalia, and all things belonging to Hil. 18 E. 1. fo. 6. a County Palatine, but the jurisdiction hereof was taken away by the natute of 27 H.8,cap.26. the County Palatine then being in the Kings hands. And for further proof that it was a County Palatine, fee the Charter of buic Cancel & Si-

E.3. to Lawrence de Hastings in these words.

Rex omnibus ad quos, &c. Salutem. Sciatis quod eircumspectionis & elegan-Rex omnibus ad quos, &c. Salutem. Sciatis quod escumipectionis & elegan-tiz prælagium quod ex apris confanguinei nostri charissimi Laurentii de Hastings An. 13. regni sui. juventutis auspiciis concepimus, merito nos inducunt, ut ipsum in his que hono- 13 Octob. Ro. Pat. ris sui debitam conservationem respiciunt, pronis favoribus prosequamur, 13 E.3.m.13. Cum itaque hareditas bona memoria Audomari de Valentia Comitis Pembrochiz (ut dicitur) jampridem fine harede de corpore suo procreato decedentis ad forores suas fuerit devoluta, inter ipsas & earum haredes proportionabiliter dividenda: Quia constat nobis quod præfatus Laurentius qui dict' Audomar' in Note here, that partem hareditatis succedit est ex ipsius Audomari sorore seniori descendens, the eldest sister & fic peritorum affertione, quos super hoe consuluimus, sibi debeatur præroga- ought to have the & fic peritorum affertione, quos juper noe cominimus, noi debeatur pratoga-tiva nominis & honoris; justum & debitum reputamus ut idem Laurentius ex fultation with seniori sorore causam habens, assumat & habeat nomen Comitis Pembrochia, learned men. quod dictus Audamarus habuit dum vivebat : quod quidem (quantum in nobis eft) fibi confirmamus, ratificamus, & criam approbamus; Volentes, & conce- Prarogativa & dentes ut dictus Laurentius prærogativam & honorem Comitis Palatini in ter- honor Comitis ris quas tenet de hareditate dicti Audomari, adeo pleno, & codem modo ha- Palatini. beat & teneat, ficut idem Audomarus illas habuit & tenuit tempore quo deceffit, illas habuit, In cujus,&c, Teste rege apud montem martini die Octob, Anno regni 13,

broke fuit Com' Palatinus, bagillum, &c. 27 H.8.cap. 26.

Sicut Audomarus

CAP. XLI.

Of the Franchise of Hexam and Hexamshire.

This was sometime parcell of the possessions of the Archbishop of Popk, and claimed by him to be a County Palatine.

At the Parliament holden in 2 H.5. it is resolved that Perambire

was a Franchile where the Kings wait went not.

2 H.5.cap.5. 9 H.5.cap.7. 8 E 4.cap.2. 33 H.8.cap.10. 14 El.ca.13.

And in the statute of 33 H.S. it is named a County Palatine.
But at the Parliament holden in Anno 14 Eliz. it was seriously eramined, and in the end Four conclusions were enaced by Authority of Parliament, . That whiles it was in the hands of the Archbishop it was tearmed and named a County Palatine, where in right or proof there was none such. 2. That it is within, and parcell of the County of Porthumberland. 3. That al Pleas of the Crown, and suits between party and party shall receive like triall, se, as the rest of the Subjects of Porthumberland ought to have. 4. That the herif and other Officers of the County of Porthumberland may execute his or their office, ac. within Heram and Heramshire. So as whatsoever it was before 14 Eliz. it is now no County Palatine, nor Franchise royall.

CAP. XLII.

Of the Courts of the Cinque Ports.

Domelday Chent. Lib Int. Raft.fo. A the first the priviledged Ports were but three. For at the making of the book of Domessay, which was in the 14 year of the Conqueror, there are but three named in that book, viz. Dover, Sandwich, and Rumney, and that these three in the time of Edward the Consessor were evonerated of such charges and burthens, as others did bear; After two Ports were added to them by the Conqueror, viz. Hastings and Dithe.

Brad.li.3.f. 118.

Bracton who wrote in the reign of H.3. nameth Haltings, Romuall, Heya, Dover, and Sandwich to be the Five Ports. De this number of Five were these Ports called the Cinque Ports, as it appeareth by a writ which Bracton rehearleth in the same place, viz.

* Memorandum quod Pharanus de Bolonia ve-

n't ad Conquestum tempore Willielmi Regis Bastardi, & in illo Conquestu perquisivit Wardam de Doveria in seodo, & habuir, & tenuit toto tempore prædict' Regis Willielmi usque ad tempus Regis Henrici, avi Regis Henrici filii Regis Johannis, & dictus Rex Hen. avus dedit dictoPharano 60. libratas terræ in elchambio pro Doveria, z iz, Manerium de Wendovre pro xl. libr. terræ, Kingshull pro x libr. terræ, & 7 hidas in Eton pro 10 li. terræ. In lib. de Abbathia Miss, so. 114.

Rex Vic' Norst. & Suff. Salutem. Sciatis quod summoniri secimus ad talem diem apud Shepwey omnia placita de Quinque Portubus sicut teneri debent, & solent coram Justiciariis apud Shipwey. Et ideo tibi pracipimus quod hoc scisi facias hominibus de Jernemewe, & balivis de Donewiz, ita quod si aliquis conqueri voluerit de aliquo qui sit de libertate vel infra libertatem Quinque Portuum, tunc sit apud Shepwey coram prafatis Justiciariis nostris querelam suam propositurus, & justiciam inde recepturus. Teste,&e.

In Dorf. Cart.
Anno I Rc. Jo.
12 te 2.m. 12.

After two moze, viz. Winchelsep and Rye were abbed: for I find a Record Anno i Regis Johannis, quod Winchelsey & Rye debent esse in auxilium Villz de Hastings ad faciend' regis servicium 20 Navium, &c.

And these have the same Franchises and Liberties that the former had; and every one of these send two Burgestes by the name of Barons of the Cinque

Bosts to the Parliament, as by the Records of the return of them remaining in Chancery at every Parliament both appear. And albeit two be abded, pet they bold their former name of the Cinque Borts. Thele Borts or Babens Doe he towards France, and therefore prudent antiquity provided, that thep thould he viatiantly and securely kept, for performance whereof these Ports have a fueciall Gobernoz of Beeper, called by his office Lord Warden of Beeper of the Cinque Posts, and is also Admirall, and bath the jurisdiction of the Admiralty amongst them, and is exempt from the Admiralty of England. This 50 E.3.5. Marben in former times was ever a man of great fivelity, wildome, courage, and experience, for that he had the charge of the principaligates of the Realm. De is also Constable of the Cattle of Dover, his jurisdiction as Constable is limited by the Catute of Artic. Super Cartas, Anno 28 E. 1. which you may ArticsSuper Cart, read, and the Exposition thereof in the Second part of the Institutes,

The Franchife of the Cinque Boots hath been time out of mind partly by ancient Warliaments, partly by ancient Charters, c. and confirmed by expresse name by the statute of Magna Carra ca,9, and were made fitte by William the

Conqueroz.

ire

For the better understanding of our books; it is to be known that there is agreat divertity between the principality of Wales, the Counties Palatines, u. and the Cinque posts. For Wales was originally no part of England, but County Balatines were parcell of the Realm of England and divided in jurifdiction, and the Tinque posts are parcell of the County of Bent, and pet ubi breve domini regis non currit, but have not Jura Regalia, and therefore regularly no writ of Error did lie of a judgment in Wales, otherwise it is in the Counties Palatines. A judgment here of lands in Wales of in the County 9H.7.12. Dalatine is void, but a judgment given here of lands in the Cinque posts is 36 H.6.33,34. good if the patviledge be not pleaded, too they be part of the County, and the franchise may be demanded in another action.

And it is to be observed that within the Cinque Ports there be divers Courts, one before the Constable of the Castle of Dober, (whereof somewhat hath been (aid before) there be other Courts within the Ports themfelbes, before the Pators and the Jurats, and another which is called Curia Quinque Portuum a-

pud Shepwey, whereof we thall speak hereafter.

If any of the Kings Courts doe write to have a record in the Cinque ports, 02 to boing of any thing within the fame, the wit thall be directed Constabulario Caftri de Dover, & Gardiano Quinque Portuum, for be is the immediate Diffi. eer to the Kings Courts for execution of the Kings writs within the Cinque

Posts. For example:

If a man plead a Record within the Cinque Ports, and the other plead Nul 30 H.6.6 &7. tiel record, there chall goe a writ to the Constable of Dover to certific the Record, for the course is so, the Kings Courts to write to the Constable, and he hall fend to the Barons, that is to the Paioz and Aurats, to certifie him of the Record which is before them, and he that certifie the Kings Court, and fo the Constable is the immediate. Officer to the Kings Court.

Pote, though Books sap that the Writs shall be directed to the Constable of Regist. fo. Dover, pet the watt is to be directed Constabulario Castri de Dover, & Gar. F.N.B.80.b.

diano Quinque Portuum.

A man hath a judgment in any of the Bings Courts, and the Defendant hath Regist. fo. land or goods but in the Cinque norts, the Blaintif shall have a West to F.N.B.80.b.132. no land or goods but in the Cinque ports, the Plaintif Hall have a Wartt to the Constable of Dover to make execution. And so it is if a man will have furety of the peace against any person within the Einque Posts, then be shall babea Writ out of the Chancery directed to the Constable of Wober, for the Regist. 153. doing thereof.

Et quia in quada Carta domini regis nunc continetur, quod omnes querela versus ipsos Barones Quinque Portuu apud Shepwey terminari debent cora Custode batem de Fe-Quinque Portuum, Pracept'est Stephano de Penecestr' nune Custodi quod partibus pradictis coram eo certum diem affignet & fac' Justicia complementu,

cap.2. 2. part of the Indirutes. 2 E.4.17:17 E.4. 16,17. 36 H.6. 34. Fortefc.Lib. Int.Raft.fo.

33 E.3.jurifd.60.

240,2,

21 F.3.49. Sec I E.4.10.

* Rot.Parl.Anno 18 E. r. fo. 6, nu. 115. Inter Abveriha & Baron' de Port de Fe-3f verfham.

a 30 H.6.6 & 7. Dier 23 El.376. Brook. Cinque Ports 25. Temps H.8 diverficy desCouris b Hil. 18 E. 1.f.6. Rot. Par.nu. 115. Dorf.Clauf. Anno 30 E.I.Maj.

e Curia Quinque Portuum de Sbepwey. Nota, this for the stile of the Court. See Brad.lib 3. Ubi fupra. d 50 E. 3.5. 33 E.3.tit.jurisd. 60.

1 E.3.fo. 2. 49 B.3.24. 11 R.2.bre 636. 46 E.z.8. 33 H.6.4. 8 H.4.7. *39 E.3.17. 20 Aff. pi.1. 8 E.3.22. e 49 E.3.24.

Cap.42. . If an erroneous judgment be given in the Etnque posts, before any of the Maiore or Burate, it finit be redielled beteis the Conffabte of Deber at the Court at Shopiney, which Court has raties of ancient time by Letters Datente of E.T.

b The Court of the Cinque posts holden at Shepwey adjudged the Abbot of Feberham (topich Abby was within the fibe Posts) for his offence to be imprisoned, for the which the Archbilliop of Canterbury caused the Brings Pini-Bers of Dover to be tited into the Eccletiantical Court, at. The Record latt. Quia fecundum confueudinem tegni approbatam, & ratione juris regil, mini-Arl regis pro sliemibus que fecetuar ratione officii fui, srahi non debeant. Res prohibult Archieplicopo Cate' ne moleftari faciat ministros suos Dovor', de co quod Abbatem de Feverlham pro delicto fuo incarceraffent per confiderationen Curia Quinque Portunit de Shepwey, &c. The tobots Record is tworthy tob road over; this that fuffice for the ond that I aim at,

Vide Plees lib.s. cap.48. the Huflings apud Shepweye.

A be jurisdiction of the Cinque ports is generall, and extends as wel to perfo nall actions, as to actions reall and mirt, or which touch the freehold, but for to not in ancient beineine, for regularly that jurisbiaton extends not to perional actions.

If a Precipe be brought of land, part within the Cinque posts, and part with ont, the tobole topit thall abate : & fie de fimilibus. "And there to a divertity be tween a Franchife to demand constant, and a Franchife, ubi breve domini regis non eterrit : 303 in the first case the Tenant of Defendant thall not plead te, but the Lond of the Franchise must benumb commans, but in the other cate the Wefenvant may plead it to the wift.

" The Panitos of P. within the Cinque posts was holden of the King as of the ones of Egle, and elchented to the king for want of beir, the king granteth the Mannoz of P. to another. And it is adjudged, that the fellon of the ming in this care both not make it of another nature then it was alose; for the privilence runneth tolth the land.

CAP. XLIII.

The Court of the Escheator, and of Commissioners for finding of Offices, &c.

We gift of the Office of Eschentor belongeth to the Office of the Lord Treasurer, who granteth the same by his Deed. He is to continue in his 14.8.cap.8. Diffice but one yeare, or once in three yeares.

for the berivation of his name, his antiquity, and fome part of this office, fee the first part of the Institutes, Sect. 4. where the ancient Anthons, and many An mottes be quoted : De ought to be fetfed of 40. Marks land, ercept @fcheators in Cities and Counties Palatine.

All Writs Dziginall of Diem clauft extremum, Mandamus, Devenerunt, Melius inquirend', Qua plura, &c. are birected to him to finde an Office for the aing after the death of his Tenant, which held by Anights ferbice in Capice, or otherwise by Unights Service.

This Officer in case of Escheats for Areason, Felong, or in case of Warde hip, or Primer featon, may finde an Office virrute Officii. But in cafe of 3 H.g.cap. 2. Warothip, og Primer leifon, if he finde an Office virtute Officii, if the Land. er, be of the yearly value of 5. li. (or above) he thall lose every time be thall sit s.pounds.

Offices found before him virtute Officii, he may returne either into the Court of Chancery, or into the Orchequer, faving at this day for Wardships, or 1926. mer feison, which he must return into the Chancery: for by the Statute of 32 H.8. Cap. 46. the Court of Erchequer is barred to deale with the fame. And Diffices found before him virtute Brevis, are to be returned by him into the Chancerp.

If he fit by force of a Writ, he ought to take the Inquest within a moneth nert after the delivery of the Wirit, and he ought to returne the same within a moneth after he taketh it, either by Warit, og virtute Officii.

Dee Capit' Elchaetria, whereof the Cicheator may inquire: and the Statute De Eschaeroribus, Anno 29 E.1. Vide Dier. 248. 249. 4 De is accountable pro carallis felonum, fugitivorum, & hujufmodi. b All Dffices found befoze him, 02 Commissioners ought to be found by the oathes of twelve men, every Juroz to have Lands, sc. to the yearly value of 40.8. in the same County, and indented, and one part by them fealed, and by him the other part, which is to remaine with the Foreman of the Jury, and to be taken in good Townes, and open places. For fecret Offices are abhorred in Law, full of veration and charge, and never have good fucceffe.

Reither be not the Commillioners can take any Enquest of inquiry of any of ther persons, but such as be impanelled and returned by the Sherife.

If he or the Commissioners shall beny any person to give evidence openly in I H.8.cap 8. his presence to such Enquetts as thall be taken before him for the finding of an 3 H.8.cap.s. Office, be hall forfeit 40. lt. If he, or the Commissioners, or any of them thall refuse to take a verdict of the Enquest offering to present the same, he shall lose 100. li. to the party grieved.

An Office found before Commissioners is as forcible in Law, as if it had 24 E.3.55. beene found befoze the Cicheatoz.

The Cicheator ought to take no fee by the Statute of W. 1. but of the Bing See the 2 part of onely, but if he finde an Office by force of any Writ, and according to the same to, the king, hee thall have a fee of 40.5. by the Statute of 23 H.6. but if it be 23 H.6. cap. 17.

3 H.8.capra.

Lib.1.fo.43.b. Alton woods. 4 E.4.24. Stanf.prer. 70.b.

3 H.8.csp.z. 8 H.6.16. 18 H.6.7. Mag. Cart. 1 part. fv.163.161. a Keylw. 6 H.S. b 1 H. 8.cap. 8. 3 H.8.cap. 2. 634 E.g. cap. 13. 36 E.3.cap. 13 otherwife void.

8 H.6.cap. 16. 18 H.6.cap.7.

the Institutes, W.1.cap.26. found 1 H.8 cap. 8.

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The Court of the Escheator, &c. Cap.43

found before him by Warit, or ex Officio, that the Lands are holden of a Subject, or if he finde an Office for the King virtue Officii, there is no fee due to him. But the Commissioners ought to take no fee at all, though an Office be found for the King, because they are not within the Statute.

33 H.8.cap.32.

b 32 H.8.cap.46. c 5 E.3.cap.9. 12 E.4.cap.9. F.N.B. 100.c. 9 H.6.fo.60.

d 5 E.3.cap.4. Register 177.

e 21 E.4.23. F.N.B.100.c. 1 H.8.cap.8. 3 H.8.cap.2. 9 H.6.fo.60. f Regist.fo.301.b

g 10 H.7.7.b.

² The Escheator finding an Office sor the king by sorce of any Writ, not exceeding the value of 5. It. shall not take above 15. 8. and the Commissioners can take nothing: b but the Paster of the Wards may allow Commissioners, Comfellours, and Feodaries their Costs. ^c The Escheator may make Deputies, but such able men, sor whom he will answer, and that have sufficient Lands in the same County, sc. and the Escheator shall certific the name or names of his Deputy or Deputies, under his Letters Patents into the Erchequer within twenty dayes after deputation made. And no Deputy shall take upon him to occupy that Office, except the Escheator bath Lands to the value of 20.1i. ^d And it am Sub-elcheator be made, not having sufficient, he may be removed by the kings sariet directed to the Escheator De Subeschaetore amovendo.

Action upon the Cale both lye against them by the party grieved, although the Offices of Record, besides the penalty of 100. I, by the Statutes of 1 H.8. and 3 H.8. The oath of the Cscheator expressing his duty, appeareth in the Register, fo. 301. b.

the Escheator is the Kings Minister, and chargeable for the goods.

e If I be polletted of the goods of a man outlaived in trespatte, and I beliber them to the Eschentor, I am discharged, quod Brian affirmavic: for he said that

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CAP. XLIV.

Courts in the Universities of Cambridge and Oxford.

T is true that each of these Univerlities hath divers Courts, Burisdictions, Liberall Arts and and Bowers, by the Charters of the Bings of this Realme, Divers of which Sciences are Luwere not grantable by Charter, but by authority of Parliament, which being mina Reipublica. doped, Queene Elizabeth, (who could (we speake it of knowledge) not oneld heat the Languages of French, Italian, and Spantih, but was learned in the Latine and Ozeek learned tongues, and excelled all others of her Ser in know. we both Divine and Humane,) for the great love and favour that her spaies the bare to ber Dighnelle Univertities, and for the great seale and care that the Lobs and Commons in Parliament had for the maintenance of good and godbiliterature, and the vertuous education of pouth within either of the faid Infbuffities; and to the intent that the ancient Priviledges, Liberties and Frandiles of either of the faid Univerlities, granted, ratified and confirmed by the Queenes Dighnelle, and ber molt noble Progenitors, might be had in great eff !mation, and be of greater force and arength, for the better increase of learning, and the further suppretting of vice: It was enaced by Authority of Parliament bolden in the 13. yeare of her most profperous reigne: 1. That each of the W. niverlities should be incorporated by a certaine name (albeit they were ancient Corporations before.) 2. That all Letters Patents of the Queens Dighmele, or by any of her progenitors or predecellors, made to either of the latd cormated bodies feverally, or to any of their predecessors of either of the faid Antberfities, by whatfoever name of names, the Chancelor, Maffers, and Scholars of either of the faid Univerlities, in any of the faid Letters Patents bad beene named, Could be good and effectuall, and available in Law, to all intents, confructions and purpoles, ec. as amply, fully, and largely, as if the faid Letters Patents were recited verbatim in that Act of Parliament, any thing to the contrary notwithstanding. 3. That the Chancelog, Pasters and Scholars of either of the faid Univerlities, and their fuccestors for ever, thould severally babe, hold, possesse, and enjoy, and use to them and their successors for ever, all manner of Hannors, ac. and Dereditaments, and all manner of Liberties, Franchifes, Immunities, Quietances, and Paibiledges, view of Frankpledge, Law dages, and other things to hat foever they be, which either of the faid corporated Bodies had held, occupied or enjoyed, or of right ought to have had, used, occupied, and enjoyed, according to the true intent and meaning of the faid Letters Patents whatfoever, any Statute, Law, Afage, Custome, or other thing or things, made of done to the contrary notivithstanding. 4. That all Letters Patents of the Queenes Bighneffe, or any of her progenitors or predeceffors, and all manner of Liberties, Franchises, Immunities, Quietances, and Priviledges, Leets, Law bayes, and all other things whatfoever therein erpreffed, given or granted to either of the faid Univerlities. by what name foever, be, and by vertue of this Ad thould be effablished and confirmed, any Statute, Law, Alage, Custom, Construction, or other thing to the contrary notwithstanding.

By this bledged Act of Parliament, all the Courts, Franchifes, Liberties, Piviledges, Ammunities, ac. mentioned in any Letters Patents, ac. to either of the faid Univerlities (which were too long here to be recited) that they might prosper in their Audy with quietnesse, are established, made good and effectuall in Law, against any Quo warranto, Scire facias, or other fuits, or any quarrell, concealment or other opposition whatsoever. See the Letters Patents of king H.8. bearing date primo Aprilis Anno 14. of his reigne, made to the University

* Note thefe generall brief and effectual I words.

· Nota hoc.

Note thefe generall binding and effectuall words. Actus benedictus.

* Haud facile emergunt quorum vi tutibus obstat Res vexara domi. of Orfoed; and other Letters Patents bearing date 26. Aprilis, Anno 3. Reginx Eliz. made to the University of Cambridge, both which are by expresse name established and consirmed by the said Act of 13. Eliz. In which Act there is a Saving to all, other then to the Ducenes Majecty, her heires and successors. Et sic omnia intuto.

Touching the Iurisdiction and Conulans of divers things belonging to the University of Cambridge, see the Parliament Roll of 5 R.2.pu, 45,4c. till pu,66.

The Maior, Battifes, and Comminatty of Cambridge were accused, for that they in the late tumults and uproces confedered with others other mitboers, bake up the Treasury of the University of Cambatoge, and thereout took and burned funder the Charters, ac. of the fato University, and also compelled the Chanceloz and Scholars of the faid University, under their Common Seals to release to the fato spain; and Burgelles, all manner of Liberties, and alfo all Actions reall and personall, and further to be bound to them in great summes of money: whereupon it was agreed in forme following: That one Writ hould be directed to the Pator, Bailifes, and Comminalty of Cambridge, that then inere to appeare in the Parliament, and to answer (the forme thereof both there appeare.) And that another Warit in forme aforelaid thould be directed to the Major and Bailifes that were at the time of the offence, (the forme whereof both there appeare alfo.) The Paioz and Bailifes that then were appeared in ma per person, and pleaded not guilty, ne witting thereto; the Comminalty by their Atturneres appeared at the day. The Maior and Bailifes, that before were at the time of the offence, appeared allo in proper person, and the faid Daio; ansme red, That he was not pathy to any fuch act, but only by compultion of others, it any thing were therein done; the which the Kings learned Councell then did his. probe, as by the Record appeareth. The Burgeffes of Cambridge delivered in to the Warliament the faid two Deeds fealed by the Chancelog and Scholars. the one Deed contained a release of all Liberties and Priviloges, with a Bond of 300c. li. to release all suits against the said Burgestes. The other was a Re leafe of all Actions reall and perfonall, as there both appeare. Upon the reading of which two deeds, they both were commanded to be cancelled for the caples a forefain. After this the Thancelor and Scholars aforefaid by way of petition.and in form of fundry Articles erhibited, thewed the beginning & whole discoursed the faid Daio: and Bailifs effectually and largely. Apon reading of which bill. it was demanded of the faid Burgeffes what they could fay, wherfore their liberties late by the King confirmed Chould not be feifed into the Kings hands as forfeited They require 3. things, viz. 1. A copp of the bill. 2. Councell, and 2. respirate

to antwer. To the copy of the bill was answered, that sithence they heard the same, it should suffice, so, by law they ought to have no copy. To Councell, it was said, that wherein Councell was to be had, they should have, wherefore they then were appointed to answer to no crime or offence, but only touching their liberties. Aster many dilatory shifts and subterfuges, the said Burgesses touching their liberties only, having no colour of defence, submitted themselves to the Kings mercy grace, saving their answers to all other matters. The King thereupon by common consent of the Parliament, and by Authority of the same, seised the same liberties into his hands as sorteited. And after the King granted to the Chancelo, and Scholars asortesiad, within the said town of Cambridge and Suburbs of the same the Assie, constance, and correction of Bread, Ale, Weights, Heastures, Regrators, and Forestallers, with the sines, and americaments of the same, peelving therefore yearly at the Orchequer 101. And certain liberties the King after granted to the said Haid, and Baillies, and increased their former see farm.

This Antersity of Cambridge hath power to print within the same omose & omnimodos libros, which the Antersity of Orford hath not. See a notable record in Parliament, 13 H.4 concerning the Antersity of Orford, by the which it was decreed adjudged by Authority of Parliament, that the Popes Bul should not impeach, or alter the right and custome of any thing concerning that Aniversity, and therefore was disallowed, too long to be here inserted.

Nota(prob dolor) the ancient Charters, Records, &c. of the Univerfity of Cambridge buint by Rebels.

Nota, by Act of Parliament. Vid. Rot. Parl. 8 R. 2. nu. 11. Nota, Suburts proveth a City. Nota, the priority of the grant to the University.

Rot.Par.13 H.4. nu.15, 16, 17. leginame eisa . Et

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CAP. XLV.

The Courts of the Stanneries in Cornwall and Devon.

De fille of the Court of Stannery is, and alwayes bath been, Magna Curla The Stile of Domini Regis Ducarus fui Cornubiz apud Crokerenton in Com' Devon' the Court. coram A. B. Custode Stannaria dicti Domini Regis in dicto Com' Devon. The Officers of this Court be the Steward, Anderwarden, tc.

It is called Scannaria, à Scanno, because the Lord Warden hath surstolation stall the Tonne in Comivall and Devon. Tonne is a Saron wood, and deriadacinnity, and the Tynners are called Scannatores.

The jurisdiction of this Court is guided by special laines, by Customes, and The jurisdiby prefeription time out of mind, which fo far as we find it to be allowed by the refolution of the Judges, or by Act of Parliament, we will recite.

In Cancellaria apud Westm.coram Nicho, Bacon milite Custod' Magni Sigilli Angliz pro Stannatoribus, die Veneris, viz. 14 die Novembris Anno regni Elizabetha Regina Quarto, Inter Martinu Trewynarde Quer'in Cur' Stannar' com' Cornub', & Johane Killegrew & Georgiu Trewynard Defend.

The Officers,

Sion. See the firft part of the Inflitutes, Sea.

Trewynards cafe,

Where the 14 day of Dober last past, the matter in question touching the Mich. 4 Eliz, in Mowing or difallowing of Warits of Error, as well between the parties aforelaid, as also fo; and concerning all other Warits of erro; touching all causes determinable in the Stannery Court in Countrall, was by the order of the Lord heeper of the Great Seal of England committed to the hearing and examination of Str William Cordel Anight Matter of the Rols, & Str James Dier Anight Chief Justice of the Common Pleas, and Justice Weston; to the intent upon the due confideration of the cause they should make report unto the said Lord Reeper of their opinions and proceedings therein, as in their judgements should feem most agreeable to justice and equity: who having accordingly travelled diligently for the understanding of the truth of the premises upon the deliberate hearing and examining of the cause in the presence of the Councell learned of both fides, and upon the peruling and confideration of the ancient prescriptions, cultomes, liberties, and Charters exhibited by the faid parties concerning the premiles, have this dag made their report unto the faid Lord Reeper as followeth. That is to fay: That for as much as the faid plaintife could not, nor did not thew forth any Record or president, whereby any sudgements or executions beretofoze paffed in any of the faid Stannery Courts have been reverled by Wirit of Erro; in any of the Aucens Bajectics Courts of her Bench of Common Pleas : And for that it appeareth unto them that divers and fundry inconvent. encles were likely to enfue by allowing of fuch Warits of Orroz, and upon other causes and confiderations them especially moving: They in their opinions think it not meet not convenient that any Warits of Errot hould palle of be fuffered in such case to reverse any of the said judgements or executions. Apon which report made, It is this day ordered by the faid Lord Reeper of the Great Scale, that the Dider heretofore taken the 15 of June last past made against the Lord Warden of the Stanneries aforefaid, his Officers and others mentioned in the lame, concerning the not allowing or not executing of any Writ or Writs of Erroy: and all and fingular the contempts contained in the fame Dader Supposed

No Writ of Error lyeth upon any judgement in the Stannery Courts Vide Simile Dier 2 ? Eliz. fo: 376. Put judgements th Il be reverfed by Appeal as in the next page appeareth.

by them to be committed, concerning the not allowing of not executing of any Wirtt of Wirits of Error as is aforefait, thall be clearly frustrated and roto, and they and every of them clearly released & discharged, any thing in the same Dider to the contrary notwithstanding. And that the said defendants and every of them shall be at their liverty to take their advantage against the said plaintife so; their executions had or to be had in any of the said Stannery Courts according to the custome of the same Courts without let or impeachment of any Wirit of Wirits of Error, or of salse judgement sued or to be sued in any of the said Courts of the saings Benchor Common Pleas, And that from houseforth no Wirit or Wirits of Error or salse judgement be hereafter sued in any of the said Courts of the saings Eench or Common Pleas' to reverse any judgement or judgements in any of the said Courts of Stanneries herefore given, or hereafter to be given, untill upon thether consideration of the ancient grants and liberties of the said Courts of Stanneries, or upon some other sufficient cause or matter, it shall be otherwise ordered and determined by this Court of the Chancery.

Mic.7 Eliz. Reginz in Camera Stellata 29 Nov.

In Camera Stellata apud Wessm' eoram Concilio ibidem die Mercurii, viz.

29 die Novemb. Anno regni Dia Eliz. Dei gratia Regina Anglia, Francia, & Hibernia sidei desensur', &c. Septimo 1564.

Where a matter in variance hath been beretofoje mobed, and depending in this honourable Court, between Martin Trewynard plaintife, and John Raskarrock, William Gilbert, John Killegrew the ponger, James Drewe, and other be: fendants by two feverall Bils erhibited into this Court, whereof the last Bill containeth no other matters of effect being not mentioned in the first Bill, other then the taking of certaine cattell of the faid complainant and others. And where also it appeareth this present day, that the taking of the said cattell was by certaine of the said desendants lawfully authorised so, that purpose by the Steward of the Stannery Court of Penwith and carted into the County of Commall for an execution upon a condemnation by judgement had in the faid court against the said plaintife. Wouching which condemnation the said complainant hath complained as well in the Court of Chancery by Bill, and in the Kings Bench by Whrit of Greez, as also in this Court, as appeareth in the first of the faid two Bils here depending, meaning by some of these wayes to call in question the validity of the said judgement, and was out of the said severall Courts by order discharged and dismissed, referring the proceeding upon the said judgement to the order of the laid Stannery Court, according to divers Drdinances by divers ancient Charters, customes, and liberties belonging to the Stannery ratified by Act of Parliament. And where it both also appear that the taking of the faid Cattell, wherenvon the faid last Will in this Court is exhibited was only for the execution of the faid recovery. And where also it both further appeare, that by the Lawes and Didinances of the faid Stannery (if any fuch cause of complaint be ministred) the same is to be redressed by appellation in severall degrees, viz. first to the Steward of the Stannery Court where the matter lyeth, then to the Underwarden of the Stanneries, and from him to the Lord Warden of the fame Stanneries: and for default of Justice at his hands, to the Princes Privy Councell, and not examinable either here in this Court og in any other Court. It is therefore this prefent day ordered, that the faid feberall Bils of complaints, and the faid defendants named in the fame, with all the causes therein mentioned, be forthwith dismissed out of this Court to be determined according to the faid Lawes and Didinances in the faid Stannery, and not elsewhere.

Erroneous judgments in the Stannery are to be reverfed by a spellation, and to whon this appellation shall be made. The resolution of all the Judges (by force of his Majesties Letters) concerning Term. Mich. the Stanneries in Devonshire and Cornwall apon the hearing of the Conncell learned of both parties at feverall dayes, and what could be alledged and shewed on either party, and upon view and hearing of the former proceedings in the Courts of the Stanneries both before and fince a certaine Act of Parliament made concerning the Stanneries in 50 E. 34

4 Jac. Regis.

* See this Act of Parliament hereafter in this Chapter.

First, we are of opinion, that as well Blowers as all other labourers and inothers (without fraud or covine) in or about the Stanneries in Cornivall and Depon, are to have the priviledge of the Stanneries during the time that thep do work there.

Secondly.that all matters and things concerning the Stanneries, or depending won the fame, are to be heard and determined in those Courts according to the

mome of the same time out of mind of man used.

Thirdly, that all transitory actions between Aymer and Aymner, or Worker and Morker (though the cause be Collaterall, and not pertaining to the Stannes my may be heard and betermined within the Courts of the Stanneries according to the cultome of the faid Courts, albeit the cause of Action did rife in any place out of the Stanneries, if the defendant be found within the Stannery; or map be fued at the Common law at the election of the plaintife. But if the one party only be a Tinner of Worker, and the cause of Action being transitory and collaterall to the Stannery do rife out of the faid Stanneries, then the defendant map by the cultome and usage of those Courts plead to the jurisdiction of the Court, that the cause of action did rife out of the Stanneries, and the jurisdiction of those Courts, which by the custome of the Court he ought to plead in proper person up: on oath. And if fuch plea to the jurisoiction be not allowed, then a Prohibition in that case is to be granted. And if in that case the defendant do come to plead to the jurifoldion of the Court upon his oath, he ought not to be arrefted eundo, redeundo, vel morando, at the fuit of any subject in any Copposation, of other place where the faid Courts of the Stannery thall be then holden.

Fourthly, if the defendant may pleade to the jurisdiction of the Court in the cale before mentioned, and will not, but plead and admit the jurifolation of the Court, and judgement is given, and the body of the defendant taken in execution; the party cannot by law have any action of falls imprisonment, but the execution is good by the custome of that Court. But if in that case it both appear by the plaintifes own thewing, that the contract of cause of action was made of did rife out of the Stanneries, and the jurifoiction of those Courts, or if it appear by the condition of the bond whereupon the action is grounded, that the condition was to be performed in any place out of the jurifoldion of those Courts, then all the proceedings in such cases upon such matter apparent, are coram non Judice.

Fifthly, we are of opinion, that no man ought to demurre in that Court for want of form, but only for subcance of matter. As if an action be brought there for words which will bear no action, or an action of debt upon a contract against Crecutors of Administrators, or such like; In such cases a demurrer may be upon the matter. And that the proceedings there must be according to the custome of those Courts ased time out of minde of man: for that no Warit of Error doth lyeupon any judgement given there, but the remedy given to the party grieved is by appeal, as bath been time out of minde of man accustomed.

Sirthly, that the Courts of the Stannery have not any jurifoidion for any

saufe of action that is locall, rifing out of the Stanneries.

Seventhly, that the priviledge of the workers in the Stanneries do not ertend to any cause of action that is locall riling out of the Stanneries (for matters of life, member, and plea of land are by expresse words excepted in their Char: ters) and no man can be erempt from justice.

Vide lib. Intr. Coke fo. 467, tit, Prohibition, & fo. 23. 293, b, in Error. Vide

Fleta lib. 6. cap. 7. § Servitia vero.

In Registro Epilcopi Exon.

de Apulia, first

Den of York, & confecrate Bi-

thep. 8 Johan.

nu.29.

10 E. 2 Inquif. 2.

Rot.Pat. 1 H.3.

daughter of Ay-

mer Earl of An-

a Rot fin.4 H.3.

c Rot.Pat.33 E.1.

The liberties and

priviledges of

the Tynners. d Pl.Co.327,318.

e 35 E.z in the

f Ror. Pat. 4 E.a.

g 12 E.3.part.1. nu.17.

Rot.Pat.21 E.3.

Vide Rot. Pat. 26 Apr. Anno

7 E.6. Gilbert

h Rot. Par. 50E. 3. holden the Mon-

Brockhouse.

day after the

gory.

Feast of S. Gre-

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Th's was Simo

Such Charters, Records, and Ads of Parliament as we have observed concerning the Stannery, we will according as we have done throughout this Treatife recite in ferie temporis.

Johannes dei gratia Rex Anglia, &c. Sciatis quod intnito Dei, & pro falute anima noftra dedimus & concessimus, ac prasenti carta nostra confirmavitnus Deo, & Ecclesia beati Petri Exon', & venerabli patri 'Simoni Exon' Episco: po & successoribus suis Exon' Episcopis Decimam de antiqua sirma Stanni in com' Devon' & Cornub. Habendum fibi & successoribus suis cum omnibus libertatibus & liberis consuetudinibus ad eam pertinentibus per manus illius vel illorum qui Stanneriam habnerint in eustodia, &c.

Rex Roberto de Courtney Salutem. Mandamus vobis quod fine dilatione & difficultate aliqua habere faciatis * Isabella Regina matri nostra Stanneriam com' Devon' cum Cuneo & omnibus pertinent'. Teste Com' Mareschallo, &c.

² Rex concessit Johanni filio Rici Stanneriam in Cornnbia, reddendo mille marcas, Simile Anno 5 H.3, Rot. finium.

Rex, &c. Sciatis quod commissmus Rico dilecto fratri nostro Stanneriam no-

6 Rot. Pat. 10 H.3. ftram Cornnbia cum omnibus pertin', &c.

Eberebe tivo feverall Charters of liberties and priviledges both bearing bate 10 Aprilis Anno 33 E.1. the one made ad emendationem Stannariarum nostrarum in Com' Devon', and the other ad emendationem Stannariarum nostrarum in Com' Cornubia, d which you may read at large in Pl. Com. Thele Charters were allowed in Anno 35 E.r.

* The Charter of 33 E.1. was confirmed to the Tynners of Debon', de verbo

in verbum, and the like in 1 E. 3, and 17 E. 3.

s Vide Rot. Almania, Anno 12 E. 3.part. I.nu. 17. An Dabinance of the Bing

by advice of his Councell concerning Tynne.

A Leafe made to Tideman de Linberghe de Cunagio Stanneriz & de emptione totius Stanni in Com' Devon' & Cornub' pro fine mille marcarum & 3500, marcarum redditus. Thete were things bone de facto, but let us turn our felbes to that, which hath the force of a law, viz. h An excellent declaration, limis tation and Expolition of the faid Charters of 33 E.r. that was made in the Parliament holden in An. 50 E.3. by authority of the same, but never printed, (which we have let down in hac verba, to the end that no syllable of the same should be omitted) it is enaded as followeth.

A trefexellent & trefredout Seignour le roy, supplie sa poure Commune del County de Devonshire que luy please per l'avys des Prelats, Countees, Barons, & auters sages in cest present Parliament ordeiner remedie de ceoque les Esteynors, & les Ministres del Esteynery del dit County ont long temps a la dit Commune sibien as seigneurs come as autres fait, & font de jour in autre diverses extortions, oppressions & grievances per colour de les Franchises a eux grantes per les Chartres nostre seigneur leroy, & de ses progenitors encontre la ley & le purport des ditz Chartres, & per lour malveis interpretation dicelles: & que les dits Chartres & les Franchises comprises en ycelles puisset leuz et declarez d'article en article si q, la Comune du dit county puisset estre apris droiturelment d'ycelles, & que cest declaration soit mys en record. Et si nul article y soit en les ditz Chartres que touche customes ou usages, que plese a nostre dit seignieur le Roy d'ordeiner & mander en breif temps suffisants Justices seigniours & autres apris de la ley a celles parties denquirer des dites customes & usages , & quils eyent poyur d'oyer & terminer tom les conspiracies, confederations, alliaunces, champerties, extortions, oppressions, grievances, fauxines & maintenances qu'eux les ditz Esteynors & lour Ministres ont fait a la dite Comune, ou a nul de eux qui plendre se vorra, & ce auxi bien al suit le roy, come de la party entendants que le roy nostre seig-

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nior ent gaignera molt, & d'autre parte se remede ne lour y soit ore fait ilz serront en breise temps pur la greinder party disherites & destruitz a toutz jours, que Dieu ne voilla. Le tenour d'ascuns des articles de les dites Chartres que lour besoignent de declaration sensuent cy apres premerement, Cestassavoir.

Sciatis nos ad emendationem Stannar' nostr' in Com' Devon' ad tranquillitatem & utilitatem Stannatorum nostrorum prædictorum eanundem concessisse pro nobis & hæredibus nostris, quod omnes Stannatores præd' operantes in Stannariis illis quæ funt dominica nostra, dum operantur in eisdem Stannariis liberi fint & quieti de Placitis Nativorum, & de omnibus Placitis & querelis Curiam nostram & hæredum nostrorum qualitercunque tangentibus, Ita quod non respondeant coram aliquibus Justiciariis vel Ministris nostris seu hæredum nostrorum de aliquo Placito seu querela infra prædict' Stannarias emergentibus, nisi coram Custode nostro Stannariarum nostrarum prædictarum qui pro tempore fuerit, (exceptis placitis terræ, vitæ, & membronum) nec non recedant ab operationibus suis per summonitionem aliajus ministrorum nostrorum seu hæredum nostrorum, nisi per summonitionem dicti custodis nostri. Et quod quieti sint de omnibus tallagiis, theoloniis, stallagiis, auxiliis & aliis custumis quibuscunque in Villis, Portubus, Feriis & Mercatis infra Com' prædictum de bonis luis propriis,&c.

Sur quoy plese declarer si autres persones que les Estainors overants in les Estayneries averont & emoyeront la Franchise grante per la dite Chartre uvoy desicome la dite Chartre voet, quod omnes Stannatores prædicti operantes in Stannariis illis sint liberi, &c. Et auters personnes que les overours, cestascavoir lours maistres que les lovent & lours servants & autres claymont mesme la Franchise. Et auxint plese declarer si les ditx overors y averont les Franchises en autre temps que quant ilz overont in mesme l'Esteynery, desicome la Chartre voet dum operantur in eisdem Stanna-

riis liberi fint,&c.

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Endroit de les dites paroles. Operantes in Stannariis illis, & dum operantur in eisdem Stannariis, soient clerement entendus, de operariis laborantibus duntaxat in Stannariis illis sine fraude & dolo, & non de

aliis, nec alibi laborantibus.

Item soit declare si mesmes les overours averont mesme les Franchises tant come ils averont aillors que in les desmesnes que seurent au Roy laiell nostre Seignior le Roy que ore est. La quel Roy Ayell lour grantast la dite Chartre autemps del dit grant des Franchises desicome la Chartre voet, quod omnes Stannatores prædicti operantes in Stannariis illis quæ lunt dominica nostra, dum operantur in eisdem Stannariis sint liberi, &c. Et ilz claymont d'avoir tout soit il einsi quils overont aillours qu'en les dites desmesnes le roy layel.

Endroit de cest article pur ce que il y a une autre article en mesme le Chartre, que lour donne conge & licence de sover, Interris, moris, & vasis ipsius domini regis & aliorum quorumcunque in Com' prædicto, & aquas, & cursus aquarum ad operationes Stannariarum prædictaru divertere ubi & quotiens opus suerit, & emere buscum ad suncturam Stanni, sicut antiquitus sieri consuevit, sine impedimento domini resis, hæredum suorum, Episcoporum, Abbatum, Comitum, Baronum,

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seu aliorum quorumcunque,&c. Il semble un besoignable chose en ce case que lour custumes & usages soient diligemment enquiz, & que le Gardeine de de Lesteynerie soit charge que il ne soeffre nul overour del dit Esteynerie sover en prees, ne autry boys, neve abate autry boys ou autry measons, ne bestover eaue on cours de eaue per malice. Et si per case le dit gardein se y vorra excuser que les dits Esteynors ny voillent obeire a ses maundements, ne cesser lour malice pur luy que tant tost il se face monstrer al grand conseil le roy, & due & hastive remedy ent serraordeignes.

Item soit declares in speciall comen les Justices qu'ore serront assignes d'aller celles Marchers pur ent faire la dite enquerre prendront lissue du pais si ascun y chiete entre parties, & coment ceste article precedont touchant les custumes & usages estoit uses devant la fesaunce de la dit Chartre l'aiel, & per queux gents tielle issue serra tries, cestascavoir le quel per foreins solement,

ou per Estaynors seulment, ou per ambideux, &c.

Endroit de cest article, en soit la vys pris du grant conseil & y soient les records en Eyre si nulles y soient, & autres evidences & remembrances deins le treasory le roy & aillours, et auxint les remembrances des seigniors queux y ont estre pur le temps serches et duement examines, & auxint soient les liures et evidences quelles les dits Estaynors ent ont envers eux venes & regar-

des, i fint que le y purra le mieltz venir al droit verity.

Item soit declare si le Gardein del Estaynery puisse tenir plee entre Esteyner de forein de querele sourdant aillours que in les lieux ou ilz sont overants descome la Chartre voet, quod custos noster prædictus vel ejus locum tenens teneat omnia placita inter Stannatores prædictos emergen' & etia inter ipsos & alios forinsecos de omnibus transgressionibus, querelis, & contractibus sactis in locis in quibus operantur infra Stannarias prædictas similiter emergen', &c. Quar'il tient plee de tieux quereles sourdants chascune parte deins la dit counte.

Endroit de cest article. Se ont extende la jurisdiction clerement solon les paroles del dit Chartre, cestassavoir, In locis ubi iidem operarii operan-

tur, & nemi aillours, ne en autre manner.

Item plese declarer de ceo que la dite Chartre vost einsi. Et si qui Stannatorum prædictorum in aliquo deliquerint per quod incarcerari debeant per custodem prædictu arrestentur, & in prisona nostra de Leidford & non alibi detineantur, quousque secundum legem & consuetudine regni nostri deliberentur. Et en cest case que Esteynor soit prise pur felony & liverez au Gardein, il est suffert sovent aller a large de quoy grand perill avient moult de sois & aussi de ceo que la deliverance del dit Gaole nest passe fait une soitz en dis ans. Et que più est per colour de mesme ceste article le dit Gardein prent hors dautre prison les emprisones pur arrerages sur accompts, & les mette a Lydesord ou ilz sont in tant sovores quilz my sont sorce de jamays fair gree a lour seigniors.

Endroit de ceste article en soit enquiz diligemment devant les Justices que ore y serront proschemement asignes denquerre per quelle authority ilz y fait einsy de puis que en mesme la Chartre sont exceptes per speciall tout z plees de terre & de vie, & de membre, & celle enqueste retourne soit declare en especi-

all fil bufoigne.

And according to this Act a Commiffion tilued out in thefe twords.

Edwardus Dei gratia Anglia & Francia rex & dominus Hibernia dilestis

Rot. Pat. 50 E.3.

The Courts of the Stanneries, &c. Cap. 45.

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lettis & fidelibus (uis * Guidoni de Brian & Johanni de Montague , Roberto . Theferwo forde Belknap, Hugoni de Segnave, Henrico Perchaie, & Waltero de Clopton, mer were Barons Salutem. Cum dominus Edwardus quondam rex Anglia Avus nofter per liament, and fat Cartam (uam quam confirmavimus ad emendationem Stannariarum fuarum in the last Parliin Com' Devon' ad tranquillitatem, & utilitatem Stannatorum suorum earundem concesserat pro se & haredibus suis, quod omnes Stanpatores pradicti operantes in Stannaris illis que fuerunt dominica fua, dum operentur in eifdem Stannariis essent liberi et quieti de omnibus Placitis Nativorum, & de omnibus Placitis & querelis curiam fuam & haredum fuoram qualitercunque tangentibus: Ita quod non responderent coram aliquibus Justiciariis vel ministris ipsius Avi nostri vel haredum suorum de aliquo Placiso vel querela infra pradictas Stannarias emergen' nifi coram cuftode Stannariarium pradictarum qui protempore fuerit: (exceptis Placitis terra, vita, & Pleas of land, membrorum,) nec recederent aboperationibus suis per summonitionem alique- life and member rum ministroxum dicti Avi nostri seu heredum suorum nisi per summonitionem communem dicti Custodis, & quod quieti effent de omnibus tallagiis, theoloniis, auxiliis, stallagiis, & aliis custumis quibuscunque in Villis Portubus, Feriis & Mercatis infra Com' pradictum de bonis suis propriis. Contefferit etiam eisdem Stannatoribus quod fodere possunt Stannum & turbas ad fannum fundendum ubique in terris, moris & vastis suis et aliorum quorumcunque in Com' pradicto, & aquas, & cursus aquarum ad operationes Stannariarum pradictarum divertere, ubi et quoties opus fuerit, et emere buscam ad functuram Stanni sicut antiquitus fieri consuevit, sine imredimento ipfins Avi noftri vel heredum fuorum, Epifcoporum, Abbatum, Priorum, Comitum, Baronum, feu aliorum quorumcunque. Et quod cuftos pradictus vel ejus locum tenens teneat omnia Placita inter Stannatores pradictos emergentia, et etiam inter ipfos et alios forinfeces de omnibus transgressionibus, querelis & contractibus factis in locis in quibus operentur infra Stannarias pradictas similiter emergen', & qued idem cuhos haberet plenam potestatem ad Stannatores pradictos & alios forinsetos in bujusmodi Placitis justiciandi & partibus Justiciam faciend prout justum, & prius in Stannariis illis fuisset ustatum. Et si qui Stannatorum pradictorum in aliquo delinquant, per quod incarcerari deberent, per custodem pradictum arrestarentur, & in prisona de Lydeford, et non alibi custodirentur, & delir antur, quousque secundum legem et consuctudinem regni Anglia dela erarentur. Et si aliqui Stannatorum pradictorum super aliquo facto infra Com' pradictum non tangente Stannarias pradict' se posuerint in Inquisitionem patria, una medietas Juratorum Inquisitionis hujusmodi esset de Stannatoribus pradictis, & alia medietas de forinsecis. Et de facto totaliter tangente Stannarias pradiitas fierent inquisitiones sicut fieri consueverint, sicut per inspectionem rotulorum Cancellaria nostra nobis constat. Ac etiam ex clamosa insinuatione tam magnatum quam Communitat' Com' pradict' in prasenti Parliamento nostro graviter conquerentium ad nostrum pervenerit auditum, quod Stannatores pradicti ac officiarii, balivi & ministri dict Stannaria Cartam pradictam pro libito sua voluntatis interpretantes, & debitum intellectum ejusdem Carta pervertentes, & etiam excedentes, ac quidam alii in magno numero afferentes se fore Stannatores cum non fuerint, habitis inter eos conspirationibus, confæderationibus, & alligantiis, quamplurima extorsiones, oppressiones, falsitates, deceptiones, Cambi-

ment of 50 E.3.

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partias ambidextras, manutenentias, transgressiones, damna, gravamina et excessus diversis subditis nostris dict' Com' colore Carta supradi-Ha per plures vices fecerunt, et indies facere non desistant in nostri contemptum & ipforum conquerentium grave prajudicium, dict' Com' verisimilem destructionem & eversionem manifectam. Nos affectantes singulos subditos nostros sub quieto & debito regimine gubernare, & nolentes tanta maleficia, si per pradict' Stannatores, Officiarios, Ballivos vel Mia nistros, aut alios quoscunque perpetrata existunt, aliqualiter transire impunita; Asignavimus vos, quinque, quatuor, tres et duos vestrum, (quorum vos prafat' Robert' unum esse volumus) Justiciarios nostros ad inquirendum per sacramentum proborum & legalium hominum de Com' pradict' tam infra libertates quam extra, per quos rei veritas melius fciri poterit, & aliis viis & modis quibus melins fore videritis de quibuscunque conspirationibus, confæderationibus, alligantiis, extortionibus, oppresinibus, falsitatibus, deceptionibus, cambipartiis, ambidextris, manute. nentiis, transgressionibus, dammis, gravaminibus & excessibus per quofcunque Stannatores vel alios in Com' pradict' factis, & per quos, vel per quem, quibus personis, ubi & quibus temporibus. qualiter & quomodo, et de aliis articulis & circumstantiis pramissa qualitercunque sangentibus plenius veritatem; & ad pramissa omnia & singula tam ad feetam nostram quam dictorum conquerentium & corum singulorum & alierum quorumcunque pro nobis, aut pro seipsis prosequi volentium, au-diend' & terminand' secundum legem & consuetudinem regni nostri Anglia: Salvis semper dictis Stannatoribus libertatibus & privilegiis eis per Cartam pradictam concessis. Et ideo vobis mandamus qued ad certos diem & loca quos vos, quinque, quatuor, tres vel duo vestrum (quorum vos prafat' Robert' unum effe volumus) ad hoc provideritis diligenter super pramissa faciatis inquisitiones; & conspirationes, confæderationes, alligantias, extortiones, oppressiones, falsitates, deceptiones, cambipartias, ambidextras, manutenentias, transgressiones, damna, gravamina, & excessus pradicta audiatis & terminetis in forma pradicta, facturi inde quod ad justitiam pertinet, secundum legem & consuetudinem regni nostri Anglia. Salvis nobis amerciamentis & aliis ad nos inde spectantibus. Mandavimus enim Vic' Com' pradict' quod adcertos diem & loca quos vos, quinque, quatuor, tres vel duo ve quo (quorum vos prafat' Robert' unum esse volumus) ei scire fac', venire fac' coram vobis quinque, quatuor, tres vel duobus vestrum tot & tales probos & legales homines de baliva sua tam infra libertates quamextra, per quos rei veritas melius sciri poterit & inquiri. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Westm' Sexto die Julii, Anno regni nostri Anglia 50. Regni vero nostri Francia 37. Per consilium in Parliamento.

Ret. Pat. 8 R.z.

Rot.Pat.Anno x E.4. Rot.Pat.3 H.7.

Mich. 4 Jac.In Camera Stellata. But what was done upon this Tommission we have not yet found. The said Charter of 33 E. 1. to the Tynners of Topnwall was confirmed.

And the Tharter of 33 E.1. to the Tynners of Devon' was also confirmed. The like confirmation to the Tynners of Devon'.

See the Catute of 11 H.7. cap.4. concerning Cunage and Weights.

It was resolved by the whole Court that Stannum, Tyn, otherwise whitelead, not black lead, not any other base metall did belong to the king by his Pierogative, as gold and alver doe, albeit there may be tried out of the base metall metall gold or filver, but that is as the feed or Arength of the base metall, which being ertracted becomes defeatibe.

There be fine kindes of bale metals, viz. As, five Cuprum (because it was found out, as some hold, in Cypro) Copper, Scannum Tynne, Ferrum Iron, Plumbum Leab, & Orichaleum Latyn. Polybius 209 pears before Chrift wrote that this Illand was abundantly floged with Eynne. Britanni qui juxta * Belerium promontorium incolunt mercatorum niu,qui eo Stanni gratia navigant, humaniores! reliquis erga hospites habentur, hii ex terra saxosa cujus venas sectati effodiunt Stannum igne eductum in quandam Infulam ferunt Britannicam juxta, quam Vectam vocant: Ex hiis Infulis mereatores emptu stannum in Galliam portant inde diebus fere triginta com equis ad fontem Eridani fluminis perducunt.

500 M. Gamden, pa. 134. in Cornwall. And for as much as Tonne is a Staple commodity, let us in the nert place treat of the Court of the Papoz of the Staple.

Polybius lib. 3. Plinius lib.ca 8,9 Diodorus Siculus lib. g.ca.8. fo.143 floruit fub Augusto. Aut Veftau, i. the Cape of Com-

CAP. XLVI.

The Court of the Mayor of the Staple.

This Court is guided by the Law Perchant, which is the law of the Star 4 27 E.3. cap.22. ple, and is holden at the Wool-staple at Westim. And there are also two Constables, a and a certain number of Correctors to be that which vertaineth to their Dffice, as in other Staples is accustomed.

This Court (though it was far moze ancient) is frengthened and warranted by Act of Parliament which can belt expelle the jurifoldion thereof, and follow:

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Item, because the Staples cannot long continue, nor the Ordinances 17 E.3. flat. 2.c. 21 thereof made and to be made be kept, if good executors and Justices be not stablished to make thereof good and ready execution: We have The Invidiordained and established, that in every Towne where the Staple is or- thion. dained, a Mayor, good, lawfull, and sufficient shall be made and establifled, having knowledge of the Law Merchant, to governe the Staple, The Law Merand to doe right to every man after the law aforesaid, without favour, sparing, or griefe doing to any. And in every place where the Staple is, shall be two covenable Constables now at his beginning put by us, to do that pertaineth to their office, as in other Staples is accustomed; and when they shall be dead or changed, then other shall be chosen by the Comminalty of the Merchants of the faid places. And that no Major hold the Office over the year, unlesse he be newly chosen by the Comminalty of the Merchants, as well of Strangers, as of Denizens. And that the faid Mayor and Constables have power to keep the peace, and to arrest offenders in the Staples for debt, trespasse, or other contract, and them to put in prison, and punish after the law of the Staple. And a prison shall be or dained for the safe keeping of them that so shall be imprisoned. And the Mayors, Sheriffs, and Bailiffs of the Townes, where the Staple is, or joyning to the Staple, shall be attending to the Mayor and Ministers of the Staple to do execution of their commandments upon pain of grievous forfeiture: and one Lord or other of the most sufficient in the Country where the Staple is, shall be assigned to

See the first part of the Institutes. Sect.3. verb. in la ley. m. 27 E.3.cap.19.

be aide to the Mayor and Ministers of the Staple to justifie the Rebels, which by the said Mayor and Ministers cannot be justified, and to maintain and counsell them when need shall be to the good governance of the Staple, and to redresse at every mans complaint that that shall be done amisse by the said Mayor or Ministers, or other, and to do right to the complainants in this behalfe. And that the same Mayor and Constables do not, nor ordaine any thing contrary to this Ordinance, nor make interpretation nor exception to them otherwise then the words do purport, but if there be any thing that is doubted, it shall be shewed to our Councell, and there declared by good advice.

- See the fratute of 36 E. 3. cap. 7. That Perchant frangers may either fine before the Payor of the Staple according to the laws erchant, or at the Tom.

mon law.

b The bounds of the Staple at Mestm. kegin at Temple Bar, and extend to Tuthill. In other Cities and Towns, within the wals: where no wals be, the bounds of the Staple Hall extend through all the City or Town.

6 Sec 27 E. 3. how triall thall be had per medieratem lingua : & vide 11 E.I.

Cart'. Mercator'.

d See the Catute of 27 E. 3. that the Payor of the Staple may take Recognifiances of Debt under the feal of the Office, but not with the feal of the party, and

how execution thall be done theremon.

o The Apapoz of the Staple at Mostm. and the Recorder of the City of London, in the absence of the two Chief Justices, out of Term have power to take Recognisances of debts according to the form of the statute of 23 H. 8. And this is in nature of a statute staple, but it hath besides the seal of those that take it is feal of the party.

f The Payor and the Constables shall be sworn in the Chancery to do law:

fully that which pertain unto them.

s There are fibe Staple merthandifes of England, viz. Woolf, Woolfels,

Leather, Lead, and Tonne.

This word Staple, anciently written h Estaple, commeth of the French word Estape, which signifieth a Part or Parket. So as the Court of the Staple is, as much to say, as the Court in the Staple Parket, and is incident to that Parket, and it was oftentimes kept at Callice, and sometimes in Bridges in Flanders, and at Antwerpe, Hiddeburgh, &c. (and therefore it was necessary that this Court should be governed by law Perchant) and at severall times in many places within England, and now (as hath been said) is kept at Washin.

The use for this word Staple, Stapula, as Major Stapula, Statutum Stapula, &c. And we may truly say that we have but umbratilem Stapula, which in times past to so for renowned a beneficiall, k as it enriched every place where it was holden,

and it was commonly faid, that riches followed the Staple.

See the statute of z E. 3. cap. 9. and a West thereupon. 7 E. 3. in Scaccario.

1 Et Original de Scaccario Anno 12 E. 3. Rot. 2. ibid. 13 E. 3. Rot. 12. & Rot. Pat.

15 E. 3.2 part. See the Statute of the staple Anno 27 E. 3. through all the Chapters, 36 E. 3. cap. 7. 28 E. 3. cap. 1 3.14. 43 E. 3. ca. 1. 12 R. 2. cap. 16.

436 E.z.cap.7. Rot. Par. 6 H.6. nu.29.

b 28 E.3 (215.

The bounds of the Staple,
c 27 E.3. c.18.
28 E.3. ca.13.
Rot. Cart.
31 E.1.111.44.
d 27 E.3 cap.9.
F.N.B. 131.4.
Pl.com. 61 b.
15 H.7.16.
Fletalib.2.ca.57.
Sec 5 H.4. ca 12.
e 23 H.8. cap.6.

f 27 E.3.cap.23.

g 8 H.6 cap.17.

b 27 E.3.cap.8. Dier 4. Mar. 144. 2 Vid. Cart. Mercator. ubi fup. Merchants as well Strangers as Subjects and Merchandize .. k A le to fornish the King with money. Rot. Parl 7 E.4. nu.9. 1 2 E.4.nu.59. Rot. Fail. 9 R. 2. nu.4. 1 Origina'. de Scac. 7 E.3. Ror.9.

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CAP. XLVII.

Of the legall Courts and their jurisdictions within the Principality of Wales.

Dis Principality consisteth of 12 Counties, whereof 6. viz. Anglisea, Carnarban, Perioneth, Flint, Carmorthen, and Cardigan were erected by the Act intituled Scattum Wallix Anno 12 E. 1. b and the rest by the

Mallia, Mates, so called by the Sarons Brytweals, unde Wallenses, Walli, i. exteri seu peregrini: and the Britons call Englishmen to this day Saisons: these are of the posterity of the ancient Britons inhabiting on the Mest part of great Britany. This was sometime da Realmor languome and governed per suos regulos, Rex E dedit Regi Grission totam terram que jacebat trans aqua que vocatur f Sed postquam ipse Grissio forisse et ei, abstulit ab eo hanc terram, & reddidit Episcopo Cestrie & omnibus suis hominibus, qui ante ipsam tenebant.

*By force of a Commission directed to divers discreet and learned men as well English as Welth, viz. Griffith ap Lluellin, Gitten Owen, John King and others, it was found that Owen ap Meredith ap Theodore which marted Katherine daughter of France and Dowager of King H. 5. was lineally descended from h Cadwallader King of the Britains, and gave the Armes of the Princes of

And here we are justly occasioned to discover the error of those that have given to our late Soveraigne Lady Dueen Elizabeth, of ever glorious and blessed memory, the strands of Tydur, and consequently so her Brandsather, Father, Brother, and Sister: which whether it were out of ignorance or malice some do question, because it she had any strands at all it was Theodore and not Tydur, which is a nick or by-name. But we rather take it to grow out of ignorance, for that in truth the had no strands at all: for this Owen her Ancestor had no strands: and therefore was called Owen ap Meredich, that is the sonne of Meredich, ap Theodore, (the some of Theodore) ap Grono, &c. All which were Christian names: so as they should rather have called her Elizabeth Owen, his own name, or Elizabeth Meredich, his fathers name, then Theodore his Brandsathers Christian name: but Almighty God would not suffer her to have a strands, because by his grace and goodnesse the should deserve sor her Imperial vertues to be called Elizabeth the Great.

land, thereby as Brackon faith, was sub porestate regis. And so it continued untill the 11 year of the reign of laing E.1. when he subdued the Prince of Wales rising against him, and executed him so, treason, whereof Fleta who lived in those bayes speaketh thus. Et unico malesactori plura poterunt infligi tormenta, sicut contigit de Davide Principe Wallix cum per Edwardum quinque judiciis morras libus torquebatur, suis namq; meritis exigentibus, detractus, suspensus, dismembratus suit & combustus, cujus caput principali Civitati, quatuorq; quarteria ad quatuor partes regni in odium tradit' deserebatur suspendend'.

m The nert year viz. in the 12 year of king E.1. by authority of Parliament it in Calvinscase is declared thus, speaking in the person of the king (as ancient statutes were alien, Brackon

Sec W.1. cap. 17 the fecond pare of the Institutes, fol.489 &c. Star. Wallix Anno 12 E. 1. in ver. Mag.Ca t. part 2.fo 2. 6 27 H. 8-ca. 16. 34 H.8.car. 26. Wallus. 15 E.g. Record. 38 & tir. Error. 2 H. g.cap.6. 19 H 6.fo. 12. d Realme from the French word Roiaume, and both à Rigno. e Domesday in Com. Ceffr. Ep. Ceftr. f Domelday in Com. Here ford. Rex in Arenfield. Rex Griffin & Ble vaffaverunt hanc terram T.E. Quandoque Rex Griffin nominatur Rex Mariadoc g Rot. par. Anno b Cadwallader King of the Britains. Mat. Parke Archiep. M. S. i This bleffed Q icen raigned the years of Augustus, and lived the age of David, a King elder then a .y King or Queen fince the Conquest, and yet had vegetum corpus & zividum ingenium. k Lib.7.fo.21.b. in Calvins cafe. Tr. 5 E.3. 40.

* Note, dive s Monarchs hold their Kingdoine of others jure feadali. As the Duke of Lumburdy, Cicill, Naples, and Bohemia of the Empire. Granado, Leons of Aragon. Navarre, Portugall, of Caftile. And fo others. Dorf. Clauf. 15 E.z. m.13. De Wallenfibus ad Parl. apad Ebsrum venire fac' viz. 24 de descretioribus, legalioribus & validioribus hominibus de partibus Southwallie, & 24de partibus Northwallie. Rot. Clauf. 20 E.2. m-3.accord. 21 Jac.ca 28. b 27 H.8.ca.26. 34 H.8. ca.26. 37 H.8.ca.26. 18 Eliz. cap.7. c The twelve

Wales, d Trin.34 Eliz.in the case of Morgan of the report of the Chiefe Justice Popham.

Counties of

So it was refolved by divers Juflices in Hil. 5 Jac. Regis.

21 Jac.regisc. 10

Hil. 5 Jac.

Rot. Clauf. Anno

wont to do) Divina providentia, qua in fua dispositione non fallitur, inter alia sua dispensationis munera, quibus nos & regnum nostrum Anglia decorari dignata est, terram Walliz cum Incolis suis priusnobis * jure seodali subjectam jam sui gratia in proprietatis nostra dominium, obstaculis quibuscunque cessantibus, totaliter & cum integritate convertit & coronæ regni prædicti, tanqua partem corporis ejuldem annexuit & univit. Det this wife and warlike nation was long after this not fatisfied not contented, and especially, for that they truly and con-Stantly took part with their rightfull Soveraigne and liege Lord hing Richard the Second; In revenge whereof they had many febere and investibe lawes made against them in the reigns of H. 4. H. 5. &c. All which as unjust are repealed and absogated. And to fay the truth, this pation was never in quiet, untill Bing H.7. their own country man obtained the Crown. And yet not fo really reduced in his time, as in the reign of his fonne king H. 8. in whole time by cer. taine just laws made at the humble fult of the Subjects of Wales, the Principa lity and Dominion of Wales was incorporated and united to the Realmof England; and enaded that every one born in Wales thould enjoy the Liber. ties, rights, and laws of this Realm, as any subjects naturally boan within this Realm thould have and inherit, and that they thould have Unights of Shires and Burgelles of Parliament, tc. By the which the jurisdiction of the legal Courts are thereby so perfectly and plainly established and declared, and their proceedings to be according to the laws and customes of England, as we have thought good to refer the judicious reader to those Acts of Parliament without recitall of them, where he chall find the ercellent venerable variety of Seats and Courts of Justice, with their proper jurifyidious according to the laws of England, the golden Detivand, whereby all mens causes are justly and evenly measured. Only we will adde certain things which have not been published before.

25y the said statute of 34 H. 8. It is enacted that there shall be holden and kept Sessions twice every year in every of the said c tivelbe Shires, that is to say, Glamorgan, Breeknock, Radnor, Carmarthen, Pembroke, Cardigan, Mountgomery, Denby, Flint, Carnarvan, Merioneth, and Anglesse, which Sessions shall be called the Itings Breat Sessions of Wales.

d A fine was levied of lands in the County of Carmarchen, and the Writof Covenant was Coram Justiciariis nostris magnæ Assisæ in com' Carmarchen, f because all the judiciall presidents were in that some ever since the making of the statute, it was adjudged to be good, so Communis error facir jus.

Also in the said Act of 34 H. 8. it was enaced, that the Kings most Royall Spajesty should from time to time change, sc. all manner of things before in that Act rehearsed, as to his most excellent wisdome and discretion should be thought convenient, and also to make Laws and Dedinances for the Common-wealth of his said Dominion of Wales at his Pajesties pleasure, sc. And albeit the common opinion was that the same power in so high a degree of trust, as the alteration of laws, sc. was personall to H. 8. and referred to his wisdome, discretion, and pleasure, and therefore extended not to his successor, yet so, that the subjects of the Country and Dominion of Wales had been constantly loyall and obedient, and had lived in all dutifull subjection to the Crown of England, to prevent all questions and danger the said branch of the said statute of 34 H, 8, is respealed and made void.

It was refolved by all the Instices upon a reference made to them by the Lords of the Privy Councell upon consideration had upon the statutes of 34 H.8. cap. 26. and 18 Eliz.cap. 8. that the Instices in Wales are to be constituted and made by Letters Patents, as they had been ever since the making of the statutes, and not by Commission. And upon report of their opinion to the Lord Chancelour Baron Snigge was constituted and made by Patent accordingly.

Rex dilecto & fideli suo Rico. Damory Justiciar' suo Northwalliæ Salutem. Mandamus vobis quod habito advisamento cum illis hominibus de partibus prædictis, cum quibus melius fore videritis faciend' diversimode sine dilatione venire

faciatis

faciatis ad præsens Parliamentum apud Westm. convocatum 24 homines de parti- 12 were Enlish bus illis tam Anglicos quam Wallenses ad consentiendum hiis qua ibid. procom- and 12 Welfh. muni commodo & pace & tranquillitate regni nostri & partium prad. favente 15 E. 2. in dors. Domino contigerit ordinari, Et habeatis ibi nomina præd, 24 hominum, & hoc m. 13. Wallenfes bre. Teste Rege apud Kenilworth 11 Januarii Anno 20 E.2. Rot. Claus, m.3.

By this and others of like nature it appeareth that Wellimen were in the mentum.

reigne of E.2. E. 3. &c. called to our Parliaments.

But now feeing there be Sheriffs throughout all Wales, the Wirits are die 7 H.4.cap. 15: reded to the Sheriffs to cause to be elected Unights, Citizens, and Burgeffes, and retornable into the Chancery, where before they were retorned into the Bars 8 H.6.cap.7.

The bave feen a Charter of the Carle of Arundell proving, that by the anci-21 H.6.cap.15.

ent custome of Wales, females could not inherit.

Omnibus Christi fidelibus præsens seriptum inspecturis Johannes Comes Arundel & Dominus de Mautravers, Salutem in Domino. Sciatis nos prædict, Comitem ad profecutione & specialem supplicationem Communitatis Tenen' nostroru tam duaru partium quam tertiæ partis Dominii nostri de Osewaldestrie in Mar- Marchia Walliz. chia Wallia concessisse pro nobis & haredibus nostris & per prasentes confirmasse Tenen' nostris prædict', hæred' & affig, suis, quod eorum filiæ pro defectu exit' masculini, ac corum proximi consanguinei, tam masculini quam femella de catero hæreditare valeant imperpetuum terras, tenementa & reddit' antecessoru & confanguineorum suorum ubique infra Dominium nostrum præd' eisd' modo & forma quibus utitur in communi lege Anglia, Wallica consuetudine prius ibid.de Wallica consuecontrario usitat' in aliquo non obstante: Salvis semper nobis & hared' nostris tudo. heriotis, releviis, fect' cur' & al' consuetudinib' quibuseung; de dictis terris & tenementis ante hanc nostră concessionem nobis quomodolibet pertinen'. In cujus rei testimonium huie præsenti script' nostro concessionis Sigillum nostrum feeim' apponi: Hiis testibus, Willielmo Ryman, Thoma Baret, Willielmo Sideney Armigeris, Hugone Burgh, Sen' Dominii nostri præd', Rich, Irland, Hoel ap Ogn' Gouch, & aliis. Dat' in hospitio nostro London vicesimo quinto die mensis Aprilis An, tegni Regis Henrici Sexti post conquestum Octavo.

At this day women are inheritable in Wales, according to the Common law

in England.

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Ordinatio de consuetudinibus Northwallia & Westwallia.

Thefe Bittons were ever lovers of the laws of England, for at the Parlia: a Rot. Par. 4 H.4. ment holden a in 4 H.4. they petitioned the King, that in all cases of the Crowne nu. 100. thoughout every Liberty in Wales the laws of England might be only used. Whereunto the King pelloed, and that his Councell thould take order therein. Vid. Hil. 20 E. 1 b Quia Episcopi Wallenses ex antiqua consuetudine testamentum aliquod condere coram Rege, non potuerunt, Rex licentiam dedit Episcopo Bangor, quod possit condere testamentum suum non obstante quod Episcopi Wallenses ex antiqua consuetudine Pasch. 10 E.a. testamentum aliquod condere non possunt. See the Chapter of the Consistory Rot. 37. 18 E.2. Courts of Arch- Bithops and Bithops, fol.

c Where erecution thall be made of lands in the Warches by the Sheriffe of 5 E.3. Roc. 40. County nert adjoynthia, ficur folebat antiquirus. See the iR ecoud at large.

d Affach is a Brittich word and fignifieth a custome in Wales, which was to ercuse one of the death of a man by the oath of 300 men. But this ftrange kinde Gloc. of ercuse or acquitall is abrogated by fatute.

Ethere was also a certain triall in Wales called a Raythe, but that is also Rot. Parl. 18 E. z. abrogated.

18 E. 2 ca. 2. 5 E. 3. fo. 30. 45 E. 3. bre 588. 21 H. 3. bre 881. fimile. d 1 H. 5. cap. 6. e 6 H. 6. nu . 33.

Rot. Clauf. vocat, ad Parlia-

1 H. 4.cap. 1. 10 H.6. cap. 2. 27 H.8. cap.26. 34 H. 8. cap. 26. 35 H.8.cap.11.

b Rot. Pat. 13 E. T. Ro.37.22 Wallia Rot. 73. Trin. coram Rege. c Hil. 18 E.z. Rot. 73.cor. rege. 18 E.z.nff. 382. Rot.3. 13 E.3. . jurisdiction.33.

* 9 E.2. m.3.

CAP. XLVIII.

The Court of the President and Councell in the Dominion and Principality of Wales, and the Marches of the same.

Caving now the Legall Courts in the Dominton of Wales, to proceed by the right rule, secundum legem & consecudinem Angliz, Let us speak somewhat of the Court of Equity before the President and Councel there.

This Court is Arengthened and warranted by the fatute of 34 H.8, Ca,26,

with a reference to prescription before it, in these words.

Item, that there shall be, and remain a President and Councell in the said Dominion and Principality of Wales, and the Marches of the same, with all Officers, Clerks, and incidents to the same in manner & form as heretofore hath been used and accustomed: which President and Councell shall have power and authority to hear and determine by their wisdomes and discretions such causes and matters as be, or hereafter shall be assigned to them by the Kings Majesty, as heretofore hath been accustomed and used.

They lit by force of the hings Commission and Instructions, and proceed as in a Court of Equity by their wisedomes and discretions. Herefordhire, Morcesterthire, Shropthire, and Bloucesterthire are included within this Commission, prefending that these Four Shires are within the Parches of Wales.

That their Four Shires are no part of the Parches of Wales, but ancient Shires of the Realm of England, appeareth by Six manner of proofs.

#tra, by erpzelle Books, viz. 18 E. 2. Aff. 82, 1 E. 3, 14, in Dower, 7 E. 3.

9 E.3. in Dower. 6 H.4.fo.9. in Seire fae'. F.N.B. 168.

Secondly, by Acts of Parliament, viz. Prarog. regis. 17 E.2, cap.1.28 E.3. cap.2. 2 H.4.cap.12. & 16,17. 23 H.6.cap.5. 27 H.6.ca,4. 31 H 6.ca,4. 32 H.8. cap.13. 13 El cap 13.

Thirdly, by Records of Parliament. 3 R. 2. nu. 29. & 30.

Fourthly, by reason. 1. These sour Shires were ancient English Shires, and governed by the laws of England, and not by discretion of the President and Councell: and this were to bring their inheritances, goods, ic. ad alied examen. 2. At one and the same time there were in sommer times Earls of the Parches of Wales, and severall Earls of these sour Tounties, and therefore they could not be one and the same.

Fifthly, by the resolution asozesaid of those some Audges concerning Chechire and Flyntshire (which were included also within the Commission) that they were not within the Parches of Wales, and therefore out of the jurisdiction of the President and Councell, and so remain untill this day: For a Commission without an Act of Parliament cannot raise a Court of Equity, as of

ten hath been faid befoze.

Lattly, by the commandment of the King, all the Justices of England, and Barons of the Exchequer were assembled concerning the jurisdiction of the President and Councell of Wales, and the Parches of the same, who upon hearing of Councell learned on divers days, and upon mature deliberation resolved upa voce, that the said Four Counties were not within the jurisdiction of the President and Councell. 2. That for a smuch as the President and Councell have

Rot.Par.16 R.2. nu 44. there was a Prefident of Wales. 34 H.8.cap 26.

> See before in the Chapter of the County Palatine of Chester.p. 212.

Mich 2 Jac regis the cate of Edward Lord Zouch Prefident of Wales. 8.

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1 e alimited authority if they proceed in any matter that is out of their furisdiction either in respect of the place or of the authority limited to them, appositition Regin. &8. may be granted, as to the Harthatten and the tike. Which resolution being made known to his Pajetty his Pajetty was gracioully pleased, that the Lord presidents Commission thouse be reformed: whereupon the Lord Zouch gabe over his place. And yet the Committion was not after reformed in all points as it ought to have been .

Rodry Maure, 03 Rodry the great, Bing of Wates, fon of Merfyn Fryth bad This is added for ifine three fons, Mervyn, Anarawd, and Cadelh. In the pear wherein he bied, the letter underviz. Anno dom,877. (Bing Alfred, alfas Alured, then reigning in England.) this great Rodry Dibited his Bingdome of Wales into three Principalities. ries concerning The first he called Guyneth, the English Porth-males, the Latinist Venedotia. Wals. The second Patricipality was called Powis land, in Latin Powisia, of some Weff-wales, bo; dering apon England. The third be called Dehevbarch, the englith South wales, in Latin Demetia. The first Principality, some fap,he mbe to Mervin, after others, to Anarawd. The fecond to Anarawd, fome fanto Cadeth. The third to Cadeth, forme fay, to Mervyn. The first was the best. because it was the quietest. The fecond was often invaded and troubled by the englith. Into the Third often tocarfions were made by the Englith, the Bozman, and the Fleming. The division of this Lingdome (howfoever it was) woundt in processe of time fuch a division between these Princes, as it was mber quiet untill it came under one Monarch and King again: For the royall pignity of a Monarch of King, from tohence all other fabotofinate bignities, canguam lumen de lamine, are berived without any diminution, will fuffer no dis offion. Regia dignitas est indivisibilis; & qualibet alia derivativa dignitas est si-

The most wofull event that fell out in this Realm, when Gorbodug Divided this Bingdome between his two fons, Ferrex and Porrex, and what beavy event time to palle, untill it was reduced again under one Monarch, let our Distories tell pou : And letting palle others, I cannot over palle the milerable effate with in this Kingdome under the Heptarchy, untill all was reunited under one Soberaign. And this is the reason, that in England, Scotland, and Ireland, the royall dignity is descendible to the eldest daughter of litter, ic.

But let us look a little into forain parts. Oedipus King of the Thebanes had illue two fons, Polynices, and Eceocles : he ordained, that after his decease, his two fons thould alternation by course, at. reign in his Bingdome. But what was Sea. in Theb. the event? Frattes de regni hareditate dissidentes singulari certamine congressi mutuis vulneribus ceciderunc. But to return again to our Cales.

It is divided from England by a ditch after the name of that laing that made Cambden in the it, called thing Offa his ditch.

bing E. 3. at the Parliament holden Anno 17. of his reign, by Charter ellablithed by Authority of Parliament, created Edward (called the black Prince) Prince of Wales in these words, De Concilio Pralatorum, Comitum, Baronum & Communium in generali Parliamento nostro apud Westm'die Luna in Quindena Paschæ proxime præterito convocato ipsu Edw:Principem Walliæ se- 4A Chapelet of cimus & creavimus, & dictum Principatum fibi dedimus & concessimus,& per Canam nolfram confirmavimus, ac iplum de dicto Principatu, ut ibidem pra- form of a Garficiendo præsidear, & præsidendo dictas partes dirigat & desendat, per a sertum land. in Capite, & annulum in digito aureum, ac b virgam argenteam investivimus b This virge, rod, juxta morem: Habendum & tenendum de nobis fibi & hæredibus fuis Regibus latter creations Anglia imperpetuum,&c. Dut of this Charter we oblerbe , that in this Creas for more honor tion there is a great mystery, for lest then an estate of inheritance so great a is changed from Prince could not have, and an absolute estate of inheritance in so great a Pain: filver to a Verge cipality as Wales , the Kings meaning was (this Principality being fo dear or Scrper of anto him) be foodly not have: therefore a qualified fee therein he had in this sibi & harediform, tibi & haredibus fuis Regibus Anglia that by his Deceale, or attaining to bus regibes An. the Crown this dignity might be extinguished in the Trown, to the end that the glix.

F.N.B.39.1.45.f. 181,186,187. 19 H.6.54.

flanding of Re-

County of Rad-Carta creationis Principle Walle Authoritate Pargold made in

See the Princes cafe, Lib.s.

Vide Cariă E 3.
dat.apudPontem
fract. 18 Martii.
7 E.3. & Hil.
33 E.3. irrotulati
in Scaccario ex
parte Rememorator' Thefaur'. Rot.
15. the Black
Prince created
Earl being three
years old.
* Hil. An. 20 E.1.
Corá rege Rot.14.
Wallir.
† Commissionarii.

Inauditum eft.

Irrotulatur istud Recordum inter Placita de Banco Term' Pafc. An. 14 E.1. a Ortelius in Carta antiqua Britanniæ. biHumph. Lloyd apud Ortelium in the same Geograph. Britan' Hiftoriz. d Tacitus. Vide supra pa 9.
e Nota Validissimas gentes. f Rot. Pat. g E. 2. m.3. g Lib.Int.Co. fo.549,550.

Ling for the time being thould ever have the honor and power to create his beir apparant Prince of Wales, as he himself had been by his Progenitor. But of therwise it is in case of the Duchy of Cornivall, as in the Princes case, ubi supparareth.

And in the same manner is the dignity of the Poble and primary County Da. latine of Chester at the same time granted to the Prince, sibi & haredibus fais

Regibus Angliz.

Ob quamplurimos excessus more hostili vexillo displicato per Gilbertum de Clare Comitem Glone' & Hertf. & homines suos de Morgannon illatos contra Humfredum de Bohun Comitem Heref & Essex & homines suos de Brekenock, dominus rex affignavit ! Episcopum Eliens' & alios Commissionar' ad inquirendum. &c. Mandavit etiam dominus rex per literas fuas dilectis & fidelibus suis Johanni Hastings, Johanni fil' Reginaldi, Edmundo de Mortuo mari, Rogero de Mortuo mari, Theobaldo de Verdon, Johanni Tregose & Galsrido de Cannil, quod interfint apud Brekenock, &c. Et postes venerunt apud Laundon. Voluit idem dominus Rex pro statu & jure sno per ipsos Justiciarios quod inde rei veritas inquiretur per facram' tam magnatum, quam aliorum proborum, & legalium hominum de partibus Wallia & Com' Glouc' & Heref' per quos,&c. cujuscunque conditionis fuissent, ita quod nulli parceretur in hac parte, eo quod res ista dominum regem & Coronam & dignitatem suam tangit,&c. Dictum est ex parte domini regis Johanni de Hastings & omnibus aliis magnatibus supra nominatis quod pro statu & jure regni, & pro conservatione dignitatis Corona & pacis sua apponant manum ad librum, ad faciend' id quod eis ex parte domini regis injungeretur: Qui omnes unanimiter respondent, quod inauditum est quod ipsi vel corum antecessores hactenus in hujusmodi casu ad præstandum aliquod sacramentum coacti fuer',&c. Ac pluries eisdem magnatibus ex parte ipfins Regis conjunctim & separatim, libroque eis porrecto, injunctum est quod faciant sacram'; Responderunt demum omnes singulatim quod nihil inde facerent fine confideratione Parium suorum. Demum Comes Glone' feeit finem cum domino rege pro decem millibus Marcarum, & Comes Effex pro mille marcis, & uterque corum committiur Mareschallo. (Recordum per longum est, & continet tres rotulos. Et ob affinitatem, & confanguinitatem eum rege perdonantur plurima, Tamen forisfecerunt libertates suas durante vita ipforum. Et post decessum corum, haredes sui rehabeant.

But now to take our leave of this Principality of Wales, this is that the Romans called by the name of Britannia secunda, and sometimes by Valencia, and by the Britaines themselves called Cambria. And we will conclude this Preatise of Wales, ac. with that which that dercellent Historian speaking of the wars between the Roman and the ancient Britain, satth, Nec aliud adversus validissmas gences pro nobis utilins, quam quod in comune non consulunt, rarus ad propulsandum comune periculum conventus: ita dum singuli

pugnant, universi vincuntur.

1 Det 2 part. Pat. 9 E.z. m.3, Ordinat' de consuernd' North-walliz & West-

walliz.

2 Vid. Lib. Int. Co. fo. 549, \$50. Three notable matters concerning Wales.

1. Df the government of Wales before 27 H. 8, 2. Df Lordhip, sparchers, and their authorities and liberties. 3. The Act of 1 & 2 Ph. & Mar, concerning the same.

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CAP. XLIX.

The President and Councell in the North.

Dis Councell is neither warranted by Ac of Parliament, nor by prefcription, but railed by king H. 8. by his Commission mon these occalions, and in the manner hereafter expedied. After the suppellion of gonafteries of the yearly value of two hundred pound or under, which was by Ad of Parliament 4 Febr. Anno 27 H. 8. in the beginning of 28 H. 8. there mas a great infurrection of the Load Huffey and 20800 perfores in Lincolnibire metending it to be for the cause of Religion : against whom Charles Brandon Duke of Suff. went and appealed them. As foon as they were appealed, a great rebellion for the same pretence of 40000 of that County, of whom Sir Robert Aske was Leader : against whom the Duke of Post, and others went, and dispersed them. Soon after a great Commotion to; the same pretence mas raised in Lancasbire of men in that County, and in Cumberland. Weltmerland, and Mosthumberland: against whom the Carl of Derby was employed, and quieted them. After this Mulagrave Tilly and others to a great multitude did rife, and affaulted Carlifle Caftle, whom the Duke of Amf. overthiew. Soon after Sir Francis Bigor with a great number of people role at Setrington, Dickering, Leigh, and Scarbozongh in Dozkibire. bom the Duke of Post. pacified. And after this the Lord Darcy, Ask, Con-Rable, Bulmer, and others began a new rebellion about Bull in Poskthire, inhom the Duke of Post, appealed. And all these rebellions fell out between the beginning of 28 H. 8. and 30 H.8.

The King intending the suppression of the great Monasteries, which in effect he brought to patte in Anno 31 H.8. for preventing of future bangers, and keeping those porthern Counties in quiet, in Anno 31 of his reign rate fed a Wresident and Councell there, and gave them besides two severall powers and authorities under one Breat Soal, the one of Oier and Terminer, De quibuscunque congregationibus & conventiculis illieitis, coadunationibusconforderacionibus, Lollardiis, misprisionibus, falsis allegantiis, transgressionibus, riotis, routis, retentionibus, contemptibus, falfitatibus, manutenentiis, oppressionibus, violentiis, extortionibus, & aliis malefactis, offenis, & injuriis quibuscunque, per que pax & tranquillitas subditorum nostrorum in Com' Eborum, Northumberland, Westmerland, Durham, & Com' Civitatis Eborum, Kingston super Hull, & Newcastle super Tinam gravetur, &c. secundum legem & consuetudinem regni nostri Anglia, vel aliter secundum sanas discretiones vestras audiend' & terminand'. The other authority was b Nec non quascunque actiones reales, seu de libero tenemento, & personales causasque debitorum & demandorum quorumcunque in Com' prædictis, quando ambæ partes vel altera pars sic paupertate gravata suer', quod commode jus suum secundum legem regni nostri aliter prosequi non possit, similiter secundum leges & consuetudines regni nostri Anglia, vel aliter secundum sanas discretiones vestras audiend' & terminand.

But these authorities were granted, to the end that Commissioners by mebiation might quiet controversies when one of the parties or both were poor, who are ever most clamorous. And all the Authority they had was expressed

in the Patents of Commission under the Great Seal, without any reference to also clearly reinstructions, or any instructions at all. But afterwards, for that the said Commission was against law, a to the end, that their Authority should not be known, against law, nor

Anno 31 H.8.6
parce Roberto
Landavens' Epifcopo Prafidenti Concilii,
&c. & aliis fast.

a First, It was refolved by all the Judges of the Court of Common Pleas. Trin. 6 Jac. that this claufe is againft law, as the like had been formerly often refolved. See before Cap.of the Court of Requells. b 2. It was then also clearly refolved that this latter claufe was

only for the cause aforesaid, but also for that actions reall and personals were not to be heard and determined by Commission, but according to the laws of the Realm. Vid. a Eliz. Dier 175.

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they procured the first institution to be ex diametro altered, viz. that their Commission should not give them any expecte authority at all, but wholly did refer their authority to certain instructions which they kept themselves in private, and were not enrolled in any Couet, whereunto the subject might have refort, Sed mifera fervicus eft, ubi jus eft vagum, aut incognitum. And thereupon Iting Tames being informed hereof by the Audges of the Common Pleas (who had grans ted probibitions to the Prefident and Councell) gabe order that their infructions thould be enrolled, to the end that the lubjed might take advice of learned Coun: cell what course be might take to enjoy the benefit of the laws of the IR calm big best birthright,

And it appeareth in the Sublidy in Anno 32 H.S. cap. 50. that H.S. railed not only this Prefident and Councelt, but a Prefident and Councell alfo having like authority in the Weltern parts, pretending it to be for their eafe to receibe in frice at their ofon doors, but they of Cornivall, Debon' ec. Defirous to live under the immediate government of the king, and the Common law, opposed it, Et fie Commiffio ille eiro evannit, which Commiffion under the Breat Seal we have feen. See in the fatute of 13 El. where the Prefibent and Councell of Port is mentioned, and no man boubteth, but that there is a Prefibent and Councell de

facto, but what jurisdiction they have is the question.

13 El.cap. 13. See in the Chapter of the Court of Request, anfwer made to th s objection in like cafe.

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Thi is left out

it is in the Parli-

em.nt Rol, &c.

of the print in latter time, but

> Thus much (baving taken upon us to write) we have clearly and plainly delivered our opinion, and be that fearcheth the fecret of hearts , knoweth that me have publiffed nothing herein of in any other of our works, reluctance confe-

> And in respect of some continuance it hath had, and many becrees made, it were worthy of the wifedome of a Parliament for some establishment to be had therein.

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City of London. * For the Anti-

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CAP. L.

The Courts and their Jurisdictions within the City of London; And first of

The Court of the Hustings.

D; the Antiquity and name of this noble City, you may read in Lambard, Inter Leges Edovardi Regis, fo. 1 36.b. Sed atere eno judicio, nihil enim impedio. * But Ammiams Marcellinus an approved Authorabove 1200 years fince, calleth it Vetuftum oppidum. And Cornelius Tacitus, (who marted the bunghter of Lucius Agricola the Roman, and was here with him by the space of feren years) affirmeth Quod Londinum tempore Neronis (which is above 1500. wars past) fuir copia negotiatorum & comeatu maxime celebre. To be short, it is Camera regis, Reipublica cor, & totius regni Epitome.

and in fearthing among fuch Records as we had observed, of or concerning this noble City, we have observed a Charter in the Saron tongue made by William the Conqueroz in these words; pilliam Cýng gneiz pilliam Bircop 7 Gooppeger popugenopan 7 ealle ha Buphpapen be on Lunden beon, &c. i. William the Bing greeteth William the Bithop & Godfrey the Dort.

repe, and all the Burgettes that in London bestc.

This is the highest Court and of the greatest celebrity within London. It Registration is holden before the Maior and Sherifs, of all pleas, reall, mirt and personall. F.N.B.6.f. Nota, the rule of the Register is, Quodliber breve, quod tangit liberum tenementum in London, dirigitur Majori five Custodi & Vicecomitibus; & alia brevia canmm Vicecomitibus,

This word Hustings is derived of two Saron words, viz. Has which fignifis eth a house, or bench, and things, that is, caules, or pleas, as much to say, as the Bench, of Court of pleas, for Bancus of Bench is taken for a Court, as the

kings Bench, the Common Bench, tc.

Fleta lib.2, th his Chapter De differentiis Curiarum. Habet rex Curiam fuam, &c. Et in Civitatibus & Burgis & in Hustingis London, Lincoln, Winton & Eborum & alibi in libertatibus,&c. Et cap.48. Habet rex curiam suam in Civitatibus, Burgis & locis exemptis, a ficut in Hustingis London, VVinton, Lincolne, Eborum, & apud Shepey, ubi Barones & cives recordum habent,&c. So as neither the name not the Court to appropriated to London.

b For write of Error to be brought of any judgment in the Buffings; See

the Register and F. N. B.

Concerning forain Mouchers, and forain pleas, fee F. N.B. fo. 6. E. et flat.

de Glouc', cap. 1 2.

Of Lands holden, no wait both lee but in London according to the custome. Dier 15 El. 317. Judgment of the outlawates in the Hustings is not given by the Paioz, who is Cozoner or his Deputy, but by the Recorder by the custome of this City.

Fleta lib.z.ca.3. & 28.

4 F.N.B.61.9: juris utrum. 62.b. partition. & 199. ex gravi querela,b.

Regist. 130,131. F.N.B. 23 c. c F.N.B.6.c. Glouc.cap. 13. a part Institutes, 33 E.3. jurifd. 60. 36 H.6.33.

2, 2. C The two Courts of the Sherifs.

In Curia Civitatis prædict' coram Vicecom' fine brevi nostro secundum con-Regult-nbi sup. suctudinem ejusdem Civitatis. If an erroneous sudgment be giben befoze the F.N.B. 13.4. Sherifs

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The Courts in the City of London. Cap. 50.

Sherifs the party grieved thall fue a wait of erroz, and remove this before the Maioz and Sherifs in the Bullings.

Stephanides cap. de dispositione

For the Antiquity of the Sherifs and their Courts, Firz-Scephen, who wrote of the government of London in the reign of Ling Stephen, of this City faith:

Hac Civitas Urbe Roma, secundum Chronicorum fidem, satis antiquior est, &c. Unde & adhue antiquis eifdem utuntur legibus communibus inflitutis; hæc fimiliter illi regionibus est distincts, habet annuos pro Consulibus Vicecomites, habet Senatoriam dignitatem, & Magiltratus minores, &c. ad genera causamm, deliberative, demonstrative, judicialisloca sua fora singula, habet sua diebus statu-

tis Comitias&c.

In Lib. Abbat de R mey. * Tempore H.1.

Nota.

In the book of the Abby of Ramley to a conveyance og concord without date. made in the Court of the Bultings of London of a certain house in Walbace within the City, between VVilcnothus de VValbroc, and Renaldum Abbatem de Ramfey, the witnesses were (amongst others) VVillielmus de Einsford Vicecomes de London, & Johannes Subvicecomes ejus, & Gervasius Cleriens eins. More might be faid hereof, but it is clear, that to long as this City bath been a County of it felf , fo long there have been Sherifs, for it cannot be a County without Sherits. There are within the wals of this City 97. Parithes, and out of the wals 16. Pariches, franding partly within the Liberties of the City, and part without in Midd. and Surry.

4. The Court of Equity before the Lord Mayor, commonly called The Court of Conscience.

1 H 6.14.Lib.8. fo.1 26. Lib.Int Raft. Custome 21 & Ville I.

The Luftome of London is, and hath been time out of mind, that when a man is impleaded before the Sherifs, the Payor upon the fuggettion of the De. fendant may fend for the parties and for the record, and examine the parties mon their pleas, and if it be found upon his examination that the Plaintif is a. tistled that he may award that the Plaintif thall be barred: and this was hole ben by the Court to be a good Custome, but by no Custome he can examine after tudament. Bote,a Court of Cauity may be had by prescription, but cannot be railed by grant, as hath been faid in the Chapter of the Chancery, tof the Coun: ty Palatine of Thefter.

5. The Court of the Mayor and Aldermen.

Sce 43 El.c. 12. In fine. Lib. 4. fol. 64,65. Fulwoodscafe. The print is 28 E.3 cap. 10. but it should be 27 E.3.cap. 10. And fo refolved by Parliament, in

1 H.4.cap.15.

This is a Court of Record, and confifteth of the Lord Papor, the Recorder and 23. Aldermen, whereof the two Sherifs being Albermen are part.

It is ordained and established that the Papor, Sherifs and Aldermen, which have the governance of the City, thall rediente and correct the errors, defaults and mispalions which be used in the City of London, for default of good gos bernance of the Mayor, Sherifs & Albernen, ec. This is beclaratopy of their for mer power of governance, and for this cause principally amongst others, this Court was instituted.

In this Court are many Courts, as namely,

Altered in the penalty. 17 R.a. Rot. Par. nu. 26. explained by Parliament not to extend to error in judgment.

6. The Court of Orphans.

F.N.B. 142.g. 22 E.3 g rd.31. 8 R.2.1bid.166. Li. 4.64,65. Rot. Par. 1 R.2. nu.130.

The Dayor and Albernien by Tultome have the cultody of Daphans within the City. And if they commit the cultody of the Daphans to another man, be thall have a ravidyment of Ward, if the Dryhan be taken away.

It is enaced that the Mayor and Chamberlain of London for the time being,

Fulwoods case.

thall have the keeping of all the lands and goods of fuch Daphans as bappen within the City, laving to the Bing and other Lozds their rights of fuch as hold of them out of the same liberty.

A Recognizance may be acknowledged in this Court before the Payor and Lib.4. fol.64.85,

Albermen to the Chamberlain for Dephans.

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The Chamberlain is a fole corporation to him and his fuccessors for D2. Lib.4. ubi sup. hans: and a recognizance or bond made to him and his fuccestors concerning

Daphans thall by custome goe to his successoz.

The government of Daphans belong to the Dapos and Albermen, and thep have jurisdiction of them, and therefore if any Daphan fue in the Occlesianticall Tourt, or elsewhere for a legacy, or duty due to them by the Custome, a Probible tion both lige. See the First part of the Inflittes, Sect. 267, how the goods of a freeman of London Call be divided.

For the Liberties of London, fee 50 E.3. fo. 142.

An Ad was made in 7 H.4. cap.9. much prefudiciall to the literties of this 7 H.4.cap.9. City, which is in print, tit was repealed in 9 H.4.nu.30. which is not printed.

It would aske a Treatife by it felf to handle at large the other authorities and powers of the Mayor and Albermen in the Court of Albermen; and of the other Courts within this City, which we will run over as beielly as we can. And the rather, for that in my Books of Reports I have publithed many cases concerning the Courts, Customes, Liberties, Franchises, and Paiviledges of this City, and also in the First part of the Institutes, and in this and other parts Lib. c. fo. 63.64.

Rot. Par. 9 H.4.

Lib 2. fol. 57. Lib. 4, fol. 18. 54.64.65.8 113. 73.83.107. Lib.8. fol. 122.

115. 126.127.129. Vide Lib 11. fol. 53. & 194. James Bagges bis cafe. See the first part of the Inflitutes fol. 176. b. Sect. 167. See the fecond part of the Influters, Mag. Care cap.g.

7. C The Court of Common Councell.

This Court hath some resemblance of the Digh Court of Parliament, for it Lib. g. fo. 62 63. tonlifteth of two houles, viz the one of the Major and Albermen, and the other the Chamberof fuch as be of the common affembly refembling the whole Comminatty of Lone Lib. 8. fo. 123. don. In this Court they may make constitutions and lawes for advancement of 125. Le case del trave and traffick; for the botter execution of the lawes and statutes of the City de Londres. Realme, of pro bono publico, and for the good government of the City. So as thele confitutions t laws be not contrary to the laws and fatutes of the Realm. And this being made by the Mayoz, Albermen, and Comminatry, do bind with: in this City and the Liberties thereof. They of the Common attembly do give their affent by holding up their hands.

8. The Court of the Ward-mote.

Wardmote is deribed from Ward and Dote, that is, the Ward Court, In London the Parithes are as Totons, and the Wards are as Hundreds, and 7 H 6.36.38. therefore Riens diens Gard was a good challenge at the Common law.

In this City there are 26 Wards divided for the government of them among the the 24 Albermen of the City. This Wardmote inquell, confilling of 12 02 mae 32 H.8.cap.17. of every Ward. Mall enquire of fuch perfons as have not paved of amended their parts and postions of the Streets and Lanes within the laid City, tc.

7 H.7.4.

9. I The Court of Hall-mote.

This is deribed of Hall and More, as much to lay as the Ball Court, i. Conventus Civium in Aulam publicam,ebery Company of London having an Hall wherein they keep their Courts, and this Court anciently called Hall-more of Folke-mote.

The

10. The Court of the Chamberlaine for Apprentices.

Lib.8. fo. 129. the case of the City of London. This Court concerning the making free of Apprentices. One may be free of London three manner of wayes, viz. by Service, as here in Case of Apprentices: 2. By Birthright, the sonne of a Freeman: and 3. By Redemption, by order of the Court of Alberman.

#Rot. Par. 7 R.2.
nu. 37.
Vid.inf. 252,253.
* Nota hoc.
8 H.7.4.b.
Dier 22. Eliz. 373
7 H. 6. r.
21 H. 7. 16, 17.
Pl. Com. 36.b.
38. 47. 59.
Lib. 8, 60, 129.

provided the contract of the great and notable Franchises, Liberties, and Customes of the City of London, would require a whole Tolume of it self. But there is a most beneficiall statute made for the strengthning and preservation of the same, which I know no other Corporation bath. * It is enaced that the Citizens of London shall enjoy all their whole liberties whatsoever with this Clause. Licer wis non sucrum vel abusi sucrum, and notwithstanding any "Statute to the contrary.**C. Lege statutum, for by this Act the City may claim liberties by prescription, Charter, or Parliament, notwithstanding any statute made before 7 R. 1. And this is the statute mentioned in our Books.

11. The Court of the conservation of the Water and River of Thames &c.

4 H.7-cap.15.

Rot. Parl. 2 H.5. nu. 15. Rot. Parl. 2 H.5. nu. 16.

3 Jac, cap. 14.

The Palo: of London for the time being hath the conferbation and rule of the Water and River of the Thames, and the issues, breaches, and lands overflown, ic. from the Bridges of Stanes unto the water of Vendall and Pedwey, and authority as touching punition for using unlawfull Pets, and other unlawfull Engines in fishing, and to all correction and punishment there concerning unlawfull Pets and Engines there. In all Commissions touching the water of Ley, the Paio; of London shall be one, See hereafter Cap. Commission of Sewen the flatute of 3 Jac. cap. 14. that Sewers that fall into the Thames shall be subject to the Commission of Sewers.

12. The Court of the Coroner in London.

The Spayor is Coroner within the City of London, and the Court of the Coroner is holden before him or his Deputy. Vide poster in the Chapter of the Coroner.

13. The Court of the Escheator in London.

The Lord Payor is also Escheator within the City, and this Court is holden before him or his Deputy. See before in the Chapter of Escheator.

14. The Court of Policies and of Affurances in London.

43 Eliz cap. 12.

This Court litteth by force of the Commission under the Great Seal warranted by Act of Parliament An. 43 Eliz.cap. 12. there being an Officer or Clerk to register assurances, the jurification of which Court you may reade in that Act of Parliament made to encourage sperchants to trade and traffick, the benefit whereof appeareth there, and is too long to be recited, and the rather for that we can adde nothing to that Act of Parliament.

15. The Court of the Tower of London.

This Court is holden within the Airge of London before the Steward there by prescription of debt, trespasse, and other Actions of any summe greater or lef- 4 E.4.36.a.b.

inhereof you may reade in 4 E.4. fo. 36. a. b.

Rote, where it is faid, that the Tower of London is within the City of London, it to thus to be understood, that the ancient Wall of London (the mention whereof pet appeareth) extendeth through the Aower, and all that which is invironed with the laid wall, viz, on the West part thereof, is within the City of London, that is to lay, in the Parish of All-Saints-Barking within the Ward of the Tower of London. And the relidue of the Tower of London, on the Cast part of that ancient wall is within the County of Diddlefer. And this upon view and examination was found out, Mic. 13 Jac. Regis, in the case of bir Thomas Overbury, who was poploned in a Chamber in the Tower on the West part of that old wall. And therefore Weston the principall murderer was tried before Commillioners of Oier and Terminer in London, and fo was Sir Gervale Elvice Lieutenant of the Tower, as accessarp.

16. I Of the Iurisdiction and authority of the President, Censors. and Comminalty of the Colledge of Physicians scituate in Knight-Riderstreet in the Ward of Castle Barnard within the City of London and 7 miles compasse.

Of this Tolledge, and of their jurifdiction and authority, fufficient hathbeen Lib. 8. fo. 107. &c. faid in the 8 Book of Reports in Doctor Bonhams cafe, whereunto we refer the Dr.Bonhams cafe Indious Reader. Bereunto we will adde for the lafety of Phylicians, especially See the flatures of

of the Kings Phylitians a Record worthy of observation.

Rex adveria valetudine laborans de affensu concilii sui assignavit Johannem 1 Marcap.9. Arundel, Johannem Saceby, & W. Hateliffe Medicos : Robertum VVarren & Arundel, Johannem Saceby, & vv. Flateline interandum & exequendum in & 34 H. 8.cap. 8.

Johannem Marshall Chirurgos ad libere ministrandum & exequendum in & 34 H. 8.cap. 8.

Rot. Pat. 32 H 6. circa personam suam; Imprimis, viz, quod licite valeant moderare sibi diztam suam & quod possint ministrare Potiones, Syrupos, Confectiones, Laxitivas medi-Warrant Physick einas, Clysteria, Suppositoria, Caput purgea, Gargarismata Lealnen, epithimota, is to be given to fomentationes, embrocationes, capitis raturam, unctiones, emplaftra, cerera the King, ventof. cum scarificatione vel fine, emorodorum provocationes, &c. Dantes fingulis in mandatis quod in executione pramifforum fint intendentes, &c.

Upon this, Four things are to be observed. First, that no Physick ought to be given to the Bing without good warrant. 2. That this Warrant ought to be made by the advice of his Councell. 3. They ought to minifer no other Phys fick then that which is fet down in writing. 4. That they may use the after of those Chirurgions named in the Warrant , but of no Apothecary ; but to pre: pare and do all things themselves, tc. And the reason of all this is the precious regard had of the health and fafety of the King, which is the head of the Common-wealth. The Science of Phylick containeth the knowledge of Thirurgery. * 32 H.8.cap.40.

If one that is of the mysteric of a Physician take a man in cure and gibeth 3 E.3.coron. 163. him fuch phylick as within three dayes he dre thereof, without any felonious intent, and against his will, it is no Homicide.

But Britton faith, that if one that is not of the mofterie of a Phylitian of Britton cap.s. Chirurgion, take upon him the cure of a man and he dieth of the Potion of the Lotion o

dicine, this is, (faith he) covert felony. Pholitians and Thirurgions foient Sages en lour faculties, eyent fanes les Mirror cap. 4. 6 consciences, cy que rien ne ent failli a faire cure, silz ne scavoient a bone chefe De homicide mitter, ou filz a bone chefe scavoient & sentre mettent nequidant follement ou Verb. [dans' part]

3 H.8.c.6.& 11. 14 H.8.cap.5.

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The Courts in the City of London. Cap.50.

negligentment, issint que ilz mittont froide pur chaude ou le revers, ou trope pen de cure, ou nemi mitter un due diligence, & nosmement in arsons & abscissions que sont desende a faire forsq;'al peril des mesters si lour patients moreront ou perdent memories in tiels cases sont ils homicides ou mayhemers.

And thus much concerning Phylitians.

For Courts holden in other Cities, Towns Copporate, and Burghs, our purpole is not, to treat of them, because they are private and sufficiently known; but let us fap somewhat of the liberties, franchises, and immunities of this noble City.

It is enacted, that the flatute of 28 E.z. cap. 10. Mall not extend to any errone. ous judgement given or to be given in the City of London.

Dee after cap.5 4. the ancient Dffice of garbling of fpices, ec.

There is a Writ in the Register necessary to be put in execution for the tohol. fomenelle of aire in London , and in all other Cities, &c. De vicis & venellis mundandis.

Lourgulary, 02 Lourglary is an offence when any cast any corrupt thing appopfoning the water in or about London, compounded of thefe two words Lourcon. ruption, and Laron a Thiefe or Felon, as "Burglary : and if any dye by reason of any fuch offence within a year after, it is felony, and extendeth to all other Cities, Burghs, ec.

It was petitioned to the bing, that no man in Cities, Towns, or elfewhere, do carry Paces of filver, but only the Kings Serjeants at Armes, but that they carry Daces of Copper and of no other metall. Whereunto the King answered, The fame thall be fo, except the Serjeants of the City of London. who may carry their spaces of filver within the liberties of London before the spaper in the me-

sence of the Iting.

Omnes homines London fint quieti & liberi, & omnes res corum per totam Angliam, & per portus maris de theolonio & passagio, & ab omnibus aliis consuetu-

In the Charter of H. 3. bearing Tefte 18 Febr. Anno regni fui 11. the Bing granted to the City of London Vicecomitatum London & Midd. &c. And in that Charter this speciall franchise and priviledge is granted to the Sheriffes of London and Middlefer for the time being in thefe words. Ira feilicet quod fiilli qui pro tempore fuerint Vicecomites constituti aliquod deliciù fecerint, unde misericordia pecunia debeant incurrere, non judicentur ad plus nisi ad misericordia vigint' libr', & hoc fine damno aliorum civium fi vicecomit' non fufficiant' ad misericordiaru suaru solutione. Si verò aliquod deliciu secerint, per quod periculum vitæ vel membrorum incurrere debeant, judicentur ficut judicari debent per legem civitatis: De hiis autem quæ ad prædictum vicecomitatu pertinent respondeant vicecomites ad Scaccarium nostrum coram Iusticiariis nostris, Salvis eifdem vicecomitibus libertatibus quas alii cives London habent.

In the Charter of the same Bing bearing bate 16 Martii Anno regni fui undecimo supradicto, the Bing granted to the City of London Quod pullus civis civis tat prædict' faciat duellum, & quod de placitis ad coronam pertinent' se possint disrationare secundu antiquam consuetudinem civitatis, & quod infra muros civitatis, neque in portesokne nemo capiat hospitium per vim vel per liberationem Mareschal', &c. & si quis in aliqua terrarum nostrarum citra mare, vel ultra, five in portubus maris citra mare, vel ultra theolonium vel aliquam aliam consuetudinem ab hominibus London ceperit postquam ipse à recto desecerit,

Vie London namium inde apud London capiant,

In another Charter of the same king bearing date 18 Augusti Appo 11 supradict the king did dilafforest and diswarren the Forest and Warren of

Stanes in the County of Widdlefer.

And by another Charter of the same King bearing date 26 Martii Anno regoi fni 52, the King granted to the Citizens of London in these words, Concessimus eisdem civibus quod de placitis ad coronam pertinent', & hiis maxime, qua infra civitatem prædictam & ejus suburbium fieri contingent, se possint disrationare fecundum

Parl. 17 R.2. nu.26.

Regist. 267.b.

* See the third part of the Inflit. Cap. Burglary or Burgulary.

V. Caream H. I. De liber. London

11 H.3. 18 Febr. Speciall and rare liberties granted to the City of London.

Anno 11 H.z. 16 martii. Duellum,

Holpitium. Per liberationem Mareschalli.

Anno 11 H.3. 18 Augusti.

Anno 52 H.3. 26 Martii. De placitis ad coronam,

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fecundum antiquam confuetudinem civitatis prædict, eo tamen excepto, quod fu- Super tuniulos. per tumulos mortuorum de eo quod dictur' essent mortui si viverent non liceat pracise jurare sz. loco mortuorum qui ante obitum suum electi fuerint ad eos disrationandos qui de rebus ad coronam spectantibus appellati suerint, vel rectati alii liberi & legales eligantur qui idem fine dilatione faciant quod per defunctos memoratos, si venirent fieri oporteret, Et quod tam forificci quam alii attornatos facere possint in Hustingo London ram agendo quam desendendo in curia no: Hustingo. ftra

The Citizens of Burgelles of London were before and after the Conquest governed by Portgraves 02 Portgreves untill the reign of R. 1. by whole Charter they were governed by two Bailiffs: and yet king Richard in the first year of his reign appointed them a Papos, who continued therein untill the Gighth pear of Ling John, and then Ling John appointed a Mayoz. And foralmuch as fonetimes the Mayor appointed by the King was no Citizen of London, King John in the Tenth year of his reign granted to the Citizens liberty and authority in theofe de le iplis a Papoz,&c. And fo it continueth unto this day.

The Albermen of London were changed by election every year untill 28 E. 3. Then it was ordered they should not be removed without some special cause. But Ror. Parl. 17 R. 2. no.25, it is enacted, that the Albermen of London thall not from henceforth be yearly chosen, but remain till they be put out for reasona. ble cante, not with franding the Didinances of E. 2, and E. 3. and fo it fill con-

Rot. Par. Anno r E. 3. the Bing granted that the Citizens of London foodlo not be constrained to go out of the Lity of London to any war: and the liberties of this City thall not for any cause be taken into the kings hands. Rot, Parl. 1 E. 3. Authoritate Parliamenti.

Cart' H. 1. for their recreation by huns See hereafter Cap. of Forelts, pag.

Albeit by the statute of Magna Carta and other Acts of Parliament, the liberties, priviledges, and franchifes of the City of London be confirmed: pet the most beneficiall of them all is that of * 7 R.2. before mentioned: whereby it is enacted, that the Citizens of London thall enjoy the fame, with this claufe, Licer ufi non fuering velabufi fuering, a and notwithfanding any fatute to the contrary.

Thefe notable, rare, and speciall liberties and priviledges we have attempted to remember: but whether herein we have done that good to the Tity that we intended, we know not, for we have omitted many more of no small number of great rarity and consequence too long here to be recited.

See befoge pag. 125. Breve de liftis & barris pro duello fac. Vid. Rot. Cart. 18 Februarii 11 H. 3. against the eraction of the Lieutenant of the Tower of Bibelles, &c 2 part of the Institutes Mag. Cart. cap,23.

An 10 Johannis.

Mayor de le ipl's Aldermen.

Rot. Pail 17 R.z. nu.25. enacted.

Liberties not to be taken into the Kingshands.

Mag. Cart.cap.g. Rot. Pat. 11 H.3. Rot. Parl. 5 R.2. nu.19. 50 E.z.nu.143. Rot.Par.7 R.z. Vid. Sup. pag. 250 a Nota hoc.

The Court of the Justices assigned for the Government of the Jewes.

Iusticiarii ad custodiam Iudaorum assignati.

Inter leges Ed-wardi, Lamb.

m'4.nu.6.

Mnes Judzi ubicung; in regno funt, fub rutela & defensione Regis ligea debent effe, nec quilibet corum alieui diviti fe potest subdere fine Regis licen. Cap.29.fo.133.1. tia: Judai enim & omnia sua regis sunt. Quod si quispiam detinnerit cos, vel

Rot. Pat.41 H.3.

pecuniam corum, perquirat Rex,si vult, tanquam suum proprium. These Instices did hold a Court concerning the custody and government of the Jewes, as (amongst many other Records) it appeareth Rot, Par. An. 41 H.3. m. 4. pu. 6. And that then Philip Baffer, Philip Luvell, Henry de Bathon, and Simon Paffel, &c. were then Buttices ad Cuftodiam Judzorum affignat'. But when the Betwee were utterly (as bath been faib) bantibed, this Court ceafed, twhich was in 18 E. I. Anno Domini 1293. See the Second part of the Infli tnes, Stat. de Judaismo. Rot, Clauf, 18 E. 1. Memb. 6. See Tho, Walf, in Hypodigmate Neuftriz 1 8 E. 1.

The Courts of Stainclife and Frendles Wapentakes.

3 H. 5.cap 2. 9 н.б.сар.10.

Because I finde mention made in Acts of Parliament of the Courts of Stainclife and Frendles Wapentakes, ec. I thought good to refer you to those Ads.

CAP. LI.

Of the City of VV estminster.

T bath his name of the Ponaltery, which Pinter lignifieth, and it is called Weltmintter in refped of the Caltminter not far from the Tower of

This Westmiffter Sebere the first ling of the Cast Sarons that was Chatte Sebere tegan his med, founded; and he founded also the Aniversity of Cambaidge, as toozks and wit- reign Anno Dai.

neffes of his Thiffianity.

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i.3. and sat ed,

But leaving thefe, and others of like nature, to others not lying properly in my map; let us turn our eye to such particular jurisolation as within this city is exercised. For the better understanding whereof, it is to be known that within this Tity there are Twelve severall wards, out of which there are elected one Burgeffe and one Affiftant in every feverall Ward; and out of thefe tivelbestivo are elected yearly in the Thurfday in the Cafter week for Thief Burgeffes to comtinue for one whole year following. To these Burgelles authority is given by This AS was at An of marliament in the 27 year of the reign of Ducen Eliz. (not printed) to hear, eramine, determine, and punish according to the laws of the Realm and lawfull customes of the Lity of London, matters of incontinency, common fcolds, Inmates, and common annopances, and like wife to commit fuch perfons as thall offend against the peace, and thereof to give knowledge within 24 hours to some Justice of Peace within the County of Didd.

Duething concerning this ancient Monattery is observable, that after the Seebefore in Bigh Court of Parliament was divided into two feverall houses (whereof we the Chapter of have faid somewhat in the Chapter of the High Court of Parliament) the accultomed place of that theice worthy Astembly of the Unights, Citizens, and Burgeffes of Parliament (when the Parliament was holden in Westminster) was in the Chapter house of the Abbot of Westminster, there to bebate and consult De arduis & urgentibus negotiis regni, & statum regni & Ecclesia Anglicanæ concernentibus,&c. And this continued untill the flatute of 1 E.6 c.14. which gave to the King Tolledges, free Chappels, Chaunteries, and whereby the King enjoyed the ancient and beautifull free Chappell of S. Stephens, formded by King Scephen. (which had lands and revenues of the old yearly value, of 1085 l. 10 s. 5 d.) Since which time the Chappell thereof hath ferbed for the House of Commons when Parliaments have been holden at Westminster.

Radulphus de Ingham Chief Justice of England, (a berg poor man being fined before him at 13 s. 4 d.) in another tearm, moved with pity caused the Record to be raled and made 6 s. 8 d. for which he (for his fine) made the Clock (to be heard into Westminster Hall) and the Clockhouse in Westminster, which cost him 800. marks, and continueth unto this day, which sum was entred into the Roll. And almost in the like case in the reign of Aueen Elizabeth, Sir Robert Carlyn Chief Justice of England would have had Justice Southcote (one of his compagnions Justice of the Kings Bench) to have altered a Record, which the Austice denyed to doe, and said openly in Court, that he meant not to build a Clockhouse.

This Monastery in Anno 30 H.8. was surrendzed to the Iking, who erected thereof a Dean and Thapter. Anno 33 H. 8. it was raised to a Bishoppick, and Thomas Thurlby made thereof the first and last Bilhop, ec. Queen Eliz. made it a Collegge confifting of a Dean, twelve Prebends, a Schoolmafter, an Acher, 40. Scholars, and 12, Almelmen, and so it was named the Collegiate Church of Westminster.

In Anno 37 H,8, the Kings Manno; of Wellminter was made an Hono;. CAP.

the first but a probationer, but is continued to this day.

the High Court of Parliament.

Rot.Parl.Anno 50 E.3.nu.8.

Tempore E.1. Vid. 2 R.3.f.10.2.

37 H.8.cap.18

L12

CAP. LII.

Of the City of Norwich, &c.

In the book of Domesday made by William the Conqueror.

Ithin this City there was in the reign of King Edward the Confellog 1 300. Citizens, and then this City paid to the Bing 20 1. and to the Earl 10 1. And belides thele 20 s. and Four Prebenda. ries and Sir Sertaries of hong, a Bear, and Sir bogs to batt him. Rolp it peelbeth 70 l. to the King, and a 100 s. to the Queen, and a Palfrey, and twents pound of white rent to the Carl, ec.

The foundation of the Incorporation of this City is bery ancient, for in ancient Manuscripts it appeareth that In tempore Steph. Regis de nova fundata

& ut Villa populata communitas fa&:

Canden in Bri-" Urbanitas ab ui be.

*Alex Nevill. was founded by King Kanute & increased by Edw. the Confeffor,& the Monastery made of that ftrength as it feemed to be petius tastrum qua clauftrum. It was of the order of S.Benedict of black Monks. 6 Statut, de 27 H.8.concer-

c The like is not in England.

ning the Bisho-

prick of Norwich.

See before in the Chapt. of the royall Franchife of Ely, that King H.s.of the Monaftery of Ely made a Bishopr. butking H.I.had therein one end, and King H 8. another.

This City is highly commended for many things, for it is truly faid of it, Quod finis opibus, frequentia, zdificiorum elegantia, Templorum pulchritudine & numero, (Paroccias enim plus minus 30. complectitur) Civium fedulitate, in principem fide, in * exteros humanitate, inter celeberrimas Britannia urbes mento connumeranda, &c. Manibus validis (in quibus crebra disposita turres, & undecim Portz) undique obsepta, nisi ad Ortum qua slumen(com sinuoso slexu 4. Pontibus pervium Septentrionalem urbis partem interluerit) profundo alveo & przeipitibus ripis defendic. * It is preferred before all the Titles in England a This Monaftery ercept London. It hath above 30 Partities, and it is as large within the wals as London. It had within it & the Liberties Sir Religious honfes & one Dofpitall.

for the better establishing of the Ecclesiasticall jurifbiction belonging to the Bilhop of Porwich of which jurildidion in generall we are to treat here. after) it that nothe impertment to let bown the true frate of this Bilbonick.

In Anno 27 H.8. and before VVilliam Rugge Dodor of Divinity of the Unis berlity of Cambitoge was Abbot of the a Monattery of D. Bennets de Hulmo in the County of Post. and the Bithopsick of Postwich becomming boid by the beath of Richard Nick commonly called the blind Bilhop, the Iking nominated the faid Abbot to be Bithop of Porwich. And afterwards the 4. of Febr. Appo 27 H.8.

b It was (amongst other things) enacted by Authority of Parliament, That fuch person as should be elected and consecrated Bishop of the faid Sea should have and enjoy to him and his successors Bishops of the faid Bishoprick of Norwich united and knit to the said Bishoprick the Monastery of S. Bennets, and all and fingular Mannors, Lands, Tenements, &c. belonging to the faid Monastery, &c. And that the person which should be named Bishop of Norwich and his succesfors Bishops of the same Bishoprick from thenceforth should be Abbots of the Monastery of S. Bennets, and have the dignities of the said Abbacy united, incorporated, and knit to the Sea of the faid Bishop,&c.

But perule the flatute, and you fhall find that Dodo; Rugge had Beneficium vilcatum, for the Bilhoprick loft muth more by that Aa then it gained. And ale terwards this Dodo; was elected and confecrated Bishop of Aozwich: And being Patron, in the right of his Bilhop, ick, of the Bolditall of S. Giles in Roy wich, he as Patron, and Nich. Shaxton Patter of the faid Pospitall by their deed acknowledged and inrolled bearing date 6 Martii, Anno 1 E.6. Did give and grant to bing E.6. his beirs and faccestops the said Pospitall and the possession ons and peredifaments belonging to the fame, and all other their postestions and bereditaments

pereditaments in the faid County of Post. Certain Concealoss (Templorum helluones) by pretert and colour of the faid generall words passed the possessions and hereditaments of the faid Monastery of &. Bennets de Hulmo in a book of concealments under certain obscure words (which appear in the Act of Paritament bereafter mentioned) by Letters Patents of concealment bearing date the 2 day of August, Anno 27 Eliz. and VVilliam Redmain Dodos of Dibinity, and Bithop of Porwich caused one Hamond a friend of his to take an estate to him and his heirs of and from the faid Concealors of all or the greatest part of the faid Monaftery: which I (being then her Majefties Atturny Benerall) underflanding, and utterly militking the proceeding herein, conferred with the faid Bishop about the same, and in the end he was brought to agree, that an Act of Parliament (hould palle for the establishment of the faid 18thopaick and of the po festions thereof, which Ad (wherewith I was well acquainted) passed at the Darliament holden in Anno 39 El. and is in print, which you may read at large, 39 El.cap 23. wherein you thall observe the fraud and falthood of the Concealors.

What attempts these Toncealors (gracelesse and wicked men) made to the lubbersion of the Deanery and Chapter of the Cathediall Church of Postwich, you may read in the Third book of my Reports, fo.73. Sed (favente Deo & aufpice Chrifto)ifti helluones non prævaluerunt. Which I have the rather remembed both for the establishment of the said Bishoprick, as for the repose and quict of very many Fermors, Officers, and other persons claiming interests in the

faid possessions in my native Country.

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And if any question shall hereafter be made either concerning any of the posfellions of this Billioppick, or any other, or of any Dean and Thapter, or of the Colledges in either of the Univerlities, sc. by any Concealog og other; their polfestions are established by the Act of Parliament of 21 Jac. cap. 2. intituled, An 21 Jac. cap. 2. Act for the generall quiet of the subject against all pretence of concealment what-

For the Courts of Justice within this City (which is our principall aime) we have treated of the like before in the City of London. To this we will adde an Ac of Parliament concerning the jurisdiction of this City (whereof we have not found the like that we remember in any other) which in effect is as followeth.

It is enacted for the Citizens of Norwich, that if their Customes and Usages heretofore used, or hereafter to be used, be difficult or defective in part or in all, or that the same need any due amendment for any matter arising, whereof remedy was not aforetime had, that then the * Bailifs and 24. Citizens of the same City, so therefore yearly to

be chosen, or the greater part of them, shall from henceforth have power to ordain and provide from time to time such remedies which are most agreeable to faith and reason, and for the most profit, the good and peaceable government of the same town, and of strangers thereto repairing, as to them shall seem best, so as such Ordinances be profitable for the King and his people.

It is a County of it felf, and hath two Sherifs and large liberties without the wals. See the Catute of 33 H.6.cap. 7. how many Atturnies Chould be in this City. See before in the Chapter of the High Court of Parliament concerning new Daperies, tc. and Morteads tc. made in this City. See Rot. Parl.

18 E.1.fo.5 . concerning the ancient liberties of this City.

* Burgi & Civitates fundat' & ædficat' funt ad tuitionem gentiu, & populorum regni, & ideireo observari debent cum omni libertate, integritate & ratione.

14 H.4. It is enacted, that the Merchants and Artificers of Worsteads in Norf. may sell their single Worsteads to any place or persons being of the Kings amity nowithstanding any Inhibition or Liberty to the contrary.

Lib.3.fo.73. the case of the Dean and Chapter of Norwich.

Par. 2 R. 2.nu. 39. not in print.

* It hath now a Mayor and 34 Aldermen. Vide Rot. Cart. Anno

33 H.6.ca

Int. Leges Wil. Cong. 1.am. 129. Int. Leges Ethelftani & Canuti fo 62.& 106.Oppida instaurantur,&c.
* Par. 14 H.4.nu. 47. not in print.

Rot. Par. 11 H.4.

Trin.13 E. 1.in Banco Ror.76.

10 E.z.jurisd.22.

16 H.8.cap-3.

nu.48.

Trin, 1 3 E.1. in Banco, Rot. 76. Inspeximus Cart. H. 3. Civibus Norwic' de

libertatibus concess'. The beautifull Cathedrall or Pother Church of Porwich was begun to be

built by Herbert Bithop of Porwith, Anno 9 VVillielmi Rufi.

The Bilhops of this See had the first fruits of Occlesiasticall Livings with. in their Diocelle before the ftatute of 26 H.8.ca.3. which no Bithop, or Archbis thop of this Realm hab.

It hath also a famous IR iver abounding with Fith especially the Wearch.

The firong and noble Caffle of Pozwich called Blanchflower inbironeda. bout with the City, but no part thereof but of the County of Bost. was not (as some suppose) built by Bigor Carl of Porf. which some upon view therof have conjedured, for that the Arms of Carl Bigot are graven on the Wals thereof. For we find a Charter of Bing Stephen in thefe words. Stephanus Rex Anglo. rum Archiepiscopis, Episcopis, Abbat', Justie', Comitibus, Baronibus, Vicecomitibus, Ministris, & omnibus fidelibus suis Anglia, Salutem. Seiatis me dedisse in feodo & hareditate * VVillielmo Comiti VVarren' filio meo Castellum Norwici cum toto Burgo,&c.

And Rafe de VVaet Carl of Porwich Defended this Caftle of Porwich as gainst VVilliam the Conqueroz, who was bythen out of England, and travels led with his wife to Jerusalem.

But true it is that Carl Bigor being after owner thereof, did both repair and enlarge the fame, and fet his Arms upon the wals thereof. And fo much for the Antiquity (a great Danament of this City) of this Caftle which now for mant of reparation is ready to fall.

To conclude, This famous and free Tity is fully to be commended for profest. on of true Religion, their Lotalty to their Prince in all times of tumult, the good government of themfelves, and the exercise of works of Charity.

This is the chief City of my Pative Country.

Nescio qua natale solum dulcedine cunctos Ducit, & immemores non finit effe sui.

This William maried Habel daughter and heir of William Earl Warren, and in her right was Earl Warren. Vid.Mat.Par. pag.92.

CAP. LIII.

The Court of the Tourne.

Ce have froken of this Court (being a Court of Record) in the Second part of the Inflitutes, Mag. Cart. cap. 35. whereunto the will abbe a Charter of VVilliam the Conqueros, which we find invol-100 2 R.2. nu.5. pro Decano & capitulo Ecclesia beata Maria de Lincoln'.

VVillielmus gratia dei Rex Anglorum, Comitibus, Vicecomitibus, & omnibus Francigenis, & qui in Episcopatu Remigii Episcopi terras habent, Salutem. Sciatis vos omnes, & cateri mei fideles qui in Anglia manent, quod Episcopales leges que non bene, nec fecundam fanctorum Canonum pracepta ufque ad mea tempora in regno Anglomm fuerunt, communi Concilio, & Concilio Archiepiscoporum meorum & caterorum Episcoporum & Abbatum & omnium Principum regni mei emendendas judicavi. Propterea mando, & regia authoritate pracipio, ut nullus Episcopus vel Archdiaconus de legibus Episcopalibus amplius in " Hundretto Placita teneant, nec causam quæ ad regimen animarum pertinet ad judicium facularium hominum adducant, sed quicunque secundum Episcopales leges de quacunque causa vel culpa interpellatus fuerit, ad locum quem ad hoc Episcopus elegerit, & nominaverit, veniat, ibique de causa sua respondeat, & non secundum * Hundrettum, sed secundum Canones & Episcopales leges rectum deo & Episcopo suo faciat. Si vero aliquis per superbiam elatus ad Justitiam Episcopalem venire non voluerit, vocetur semel, & secundo, & tertio; quod si nec sic ad emendationem venerit, excommunicetur : et, si opus suerit, ad hoc vindicand', fortitudo, & Justitia regis vel did hold his Vicecomitis adhibeatur: Ille autem qui vocatus ad Justitiam Episcopi venire dreda. Sce Mag. noluit, pro unaqua que vocatione legem Episcopalem emendabit: hoc etiam de- Carr.cap. 35. and fendo, & mea authoritate interdico, ne ullus Vicecom' aut prapolitus, aut mi - the Expolition nister regis, nec aliquis laicus homo de legibus que ad Episcopum pertinent se the cupon. intromittat : nec aliquis laicus homo alium hommem fine Justitia Episcopi ad judicium adducar; Judicium vero in nullo loco portetur nisi in Episcopali sede, aut in illo loco quem ad hoc Episcopus constiuerit.

For the confirmation of this Charter, fee in the Register of the Bishop of London. Willielmus dei gratia Rex Anglorum R. Bainardo, & S. de magna Villa, P. de Vabines, caterisque meis fidelibus de Essex & de Hertfordshire, & de Middlesex, Salutem. Sciatis vos omnes, &c. Tenor istius Carta est in Anglico de verbo in verbum in eadem Carra. Confimilis Carra ut ante ex libro Cartarum Archiepiscopi Canquar'. Against this Charter it is objected. First, the time of the enrolling thereof, viz. in 2 R.2. being never heard of befoze. Setondly,out of the red book, Inter leges H. I. cap. 8. de generalibus Placitis Co- compositus temmitatuum. i, as well of the Tourn, as of the County Court.

a Sicur antiqua fuerit inflitutione firmatum, falurari regis imperio, vera nuper est recordatione firmatum, generalia Comitatuum Placita certis locis & vicibus & definito tempore per singulas Angliæ provincias convenire debere, necullis ultra fatigationibus agitari, nisi propria regis necessitas, vel commune regni commodum sapius adjiciant. Intersint autem Episcopi, Comites, Vicedomini, Vicarii, Centenarii, Aldermanni, præfecti, præpoliti, Barones, Vavassores, Tun-

2. part of the Inft. Mag. Cart. Ca.35. 12 H.7.18.Fineux. Rot.Par. 2 R. 2.nu.f.

This Remigius was the firft Bishop of Lincoln: the Seabeing removed from Dorche fter to Lincoln,

* i. In Turno.

* This is not inrended of the Hundred Court but that in those

a Lib. rubeu in Cuftodia Kemem. Regis pore H. 1. cap.8. Read the whole Chipter. Vide ib. Cap.11.

b Int. Leges Edw. Lamb. 135.

Vid. Stat. de Meilbricap. 10. Ecclefiafticall
causes.
Pleas of the
Crown in the
Tourn.
Private causes
in the County
Court.

d Turnum as it is here taken.
e And so is the Turn holden to this day. Mag. Cart. 35.
f And so is the County Court holden at thisday Mag. Cart. 35.
2 E.6.25.
g 22 E.4.22.
b 2. part of the Inst. Mag. Cart. cap. 17.

grevii & exteri terrarum domini diligenter intendentes ne malorum impunitas, aut Gravionum pravitas, vel judicum subversio solita miseros laceratione confiniant. Agantur itaque primo debita verz a Christianitatis jura; Secundo b regis placita; Postremo causa singulorum dignis satisfactionibus expleantur. Mhereupon they conclude, that Ecclesiasticall causes were handled in the Tomm in the reign of H.1. long after the sato supposed Charter. And certain it is that the Bishops Consistories were erected, and causes Ecclesiasticall removed from the Tourn to the Consistory after the making of the sato Red Book: Ideo penes Lectorem sit judicium.

In the same Chapter of the sato Red Book it is surther sato, Et quoscunque d Shiresgemote discordantes inveniet, vel amore congreget, vel sequestret judicio: debet enim Shiresgemot e bis, hundreda & wapentachia suodecies in anno congregari.

The Nourn is a Court of Record holden before the Sherif: the ancient Institution thereof was before Magna Carta s to hear and determine all felonies (beath of man excepted) and common nulances. In See the Statute of Magna Carta, cap. 17. and the Exposition upon the same in the Second part of the Institutes.

The fittle of this Court is Curia vifus Franc. domini regis apud B. Coram Vicecomite in Turno (100,&c. and not Turnom Vicecom' tent',&c. for Tornom est nisi perambulatio. The Articles inquirable in the Tourn are known, and need not be here rehearsed.

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CAP. LIV.

The Court of the Leet or view of Frankepledge.

Dis is a Court of Record, and at the first derived and taken out of the See Michy E. z. Tourn, and is holden befoze the Steward, and he is Judge thereof. Df Roto Northa, t. the Antiquity and jurisdiction of this Court, you thall read in the Second part of the Infliences, Magna Carta cap. 35. And what the ancient jurisdiction of the Infl. Mag. the Leet was, you thall also read in the Second part of the Institutes, Magna Carr.cap.35. Carta cap. 17.

Leb, Leth, or Leet is a Saron word, and commeth of the Merb gelahian or gelehran (S being added Euphonix gratia)i.convenire, to affemble together,

unde conventus,

If a common Bulans, tc. done within the jurisdiction of the Leet be not prefented in the Leet, the Sherif in his Tourn cannot enquire of it, for that which is within the precinct of the Leet is crempt from the Tourn, otherwise there might be a bouble charge; but in that cafe a writ may be directed to the Sherif to enquire thereof, ac. against the opinion of Fineux in 12 H.7. if his opinion be not mifreported. And by the book of 29 E.3. This writ is not taken away by the ffa: 29 E.3.21. Wilby. tute of 28 E. 3. cap. 9, made the year befoze, which was then fresh in the Judges

See the Second part of the Inflitutes, in the Exposition upon the statute of 31 El.cap. 7. concerning Cottages and Inmates, Speciall matter concerning the jurisdiction of the Leet. See for the jurisdiction of the Leet the statute of 2 E.6 cap- 10, concerning making of Malt.

The Commons petitioned that excellive fines let on the kings subjects by fuch as have Leets may be redicted, whereunto the King answered, The King

would the fame.

See a notable case concerning the jurisdiction of the Leet and Court Baron, Mich. 18 E.1. in Banco Rot. 156, Norf. Et ibi tenetur quod Clericus ad Letam vepire non habet necesse, nisi ejus præsentia ex certis causis & considerationibus fit necessaria.

This Court of the Leet map enquire of corrupt Aiduall as a common nu fance, tohereof some have doubted, both for that it is omitted in the tratute of the Leet, and of the weak authority of the book of 9 H.6. where Marryn faith, That it is ordained that none thould fell corrupt Widuall. And Corrifmore held opints on that it is Actio popularis, whereupon it is collected, that the conusance there: of belongs to the Leet. And Martyn and Neal 11 H. 4. agreeing with him faid truly, for by the b ftatute of 51 H.3 Stat. Pillor'& Tumbrel',& Affis' Panis & Cervis', and by the ftatute made in the reign of E. r. intituled, Star. de Piftoribus & Brafigtoribus & aliis Vitellariis, It is ogdained that none thall fell cogrupt III fo quals. And by the statute of 14 E.3. it appeareth that this Act was ordained in the time of his Grandfather, which was E.i.

Britton who wrote after the statute of 51 H. 3. and following the same saith thus; Puis soit inquise de ceux queux achatent per un manner de measure & vendent per meinder measure saux, & ceux sont punies come vendors des vines, & auxi ceux que serront atteints de faux aunes, & faux poys, Et auxi les " Macegrieves, & les gents que de ulage vendent a trespassants mauvase viands corrumpus & wacrus, & autrement perillous a la faunty de home. Et les Forstallers, &c. Er fo. 33. he both conclude the like passage with these words, Enconter le forme de nous statutes.

Abbas de Burgo. See the 2. part of

Int' Leges Edw.

12 H.7.18.

Ror. Par. 17 E. 3. nu.38.

Mich. 18 E. 1. in Banco Rot. 156. Norf.

Stat, de vifu Franc. 18 E.a. 9 H.6.53.b. aVid.11 E.4.6.b. per Neal & Brian. 1 R.3.1.2. 7 H.4.14,15. Brook tir. Lect 1. b In the ftar.at large p.17. Mag. Cartaparte 2. c 14 E.3.cap. 12. d Britton f. 77.2.

" Macellarius, 2 Butcher of ViFleta lib. 2.ca. 1. 6. Eft eriam. Et cap. 11. 5. Ité fi dominus.

12 E.4 ca.5.

Nota.

a Thefe work's follow after in the Act, and Nota by this it appeareth, that Beer is not of fuch lace time as fome suppose. Sce alfo Rot Par. Anno 4 H.4. n . 3. Beer and Ale mentioned to be then in Calice. Beer is a Savon word Bier, and Beer is wi hin the word Cervifia in the ancient flatures. For it is bur as the pitting of a new button to an

Est etiam arrox injuria qua perpetuam inducit infamiam cum poena Pillorali & Tumbrelli, qua quandoque fit per Pistores, Brasiatores, & alios qui falsis ponderibus utuntur & mensuris, qua etiam sit per cibaria corrupta, & semicocta vendentes, &c. But none of these statutes gave the conusance to survey and correct Atquallers so, corrupt Atquall to our Court of the Leet, therefore surther Authority therein is desired. Therein we will produce that which is omni exceptione majus, and that is by a resolution in Parltament.

By the Statute of 12 E 4.cap.8. It is rehearfed, That Mayors, Bailifs, and other like Governors of every City, Borough, and Town of substance within this Realm of England for the most part have Courts of Leets and Views of Frankpledge holden yearly within the same, and surveying of all Victuallers there, and correction and punishment of the offenders, and breakers of the Affise of the same, to be presented and amercied if default be found in the faid Courts,&c. And where divers perfons intending their fingular avail and profit, and to oppresse the faid Victuallers, and to enter and break the liberty of divers places in this Realm having Franchises (that is, Leets aforementioned) and surveying of all Victuallers, and correction of the same, had purchased Letters Patents of King E.4. to be surveyors and correctors of all such Victuallers within divers Cities, Boroughs and other places, of Ale, 2 Beere, Wine, and other Victuals,&c. in wrongfull derogation of the Liberties and Franchises of the said Cities, Boroughs, and other places, &c. as by the faid Act is rehearfed. It is established and ordained, that all Letters Patents granted by that King, orafter to be obtained of any office of fearching or surveying of Wine, Ale, Beer, or other Victual, shall be utterly void and of none effect. And that no person other then such Governors before rehearsed,&c. (that is, in respect of their before rehearsed Leets) shall use or exercise any such office, &c. And besides the declaration of the same to be void and against law, a penalty of 40 l. is institled upon such as thall exercise any such office so obtained or after to be obtained. An excellent Ad of Parliament both for the declaration of the law in the case abovesaid, as also that the Bing by his Letters Patents cannot make any new office for the furveying, correction, sc. of any thing which belong to the Jurisdiction and Conufance of any former Court which by consequent hath a large extent, and therefore we have cited the same the moze at large.

old Coat, viz. Hops to Malt and water, to make it continue the longer. b Hereby it appeareth that those Letters P atents were against law, and that this is a statute declaratory with addition of a penalty.

Some doc hold that it is within the statute of 18 E.2. some say as an incident to the Assis of Bzead and Ale, and others hold that by that Act power is given to the Lozd of the Leet to enquire of that Assis of Bzead and Ale, that is to say, of the statute intituled, The Assis of Bread and Ale, which is the said Act of 51 H 3. in which Act sellers of cozrupt Atanals are to be punished. And here, with (say they) agreeth the book in 1 R.3. so.1. that of cozrupt Atanals the Leet had jurisdiction by the statute, howsoever that is conceived, it is the Leet that bath conusance thereof.

And albeit Malt, Brasium, be no Aiduall of it self, as it is adjudged in Anno 18 E.2. Quod venditio brasii non est venditio Victualium, nec debet puniri sicut venditio Panis, Vini & Cervisia, & hujusmodi contra formam statut. Pet because it is the principall ingredient of Beer, and serveth to Aiduall the Bings housbold, ac. (as it is said in the statute of 17 R.2.) and tendeth, if it be corrupt and not inholsome, to the great hinderance of health and increase of diseases, we

intil eramine how the law frandeth therein at this dap.

Pasch. 18 E. 2. Coram Rége Rot. 76. Southr.

17 R.z.cap 4.

Mealt of Malt is a Saron wood, In Latin we call it Brafium Derived of braffo. i. ebullio, ferveo. In the ancient statutes Brasiator is taken to a Brewer. In Fleta, ubi fupra, Brafiatrix : in Britton, ubi fupra, Bracereffes, foz Brewers. In Latin we use the word Pandoxator of Potifex : and Brasiator at this day is used for a Maltmaker or Malfter.

malt is made of Barley, and cannot be well and perfeally made, unleffe it bath the time of 12 dayes in the making thereof, and both in the making thereof in the fat, flooz, Reeping, and lufficient daying of the laid Halt ; weeks at the leaft, a E.6 cap. 10. ercept it be in the moneths of June, July, and August, and in those moneths by

the space of 17 dayes at the least.

The Waltmaker ought not flackly and deceitfully day the Walt, to the intent to have an tnozdinate increase thereof by fivelling of the same, which being not fufficiently bried, within a thort time will be multy and full of " thels.

Ro person ought to put to sale any spalt which shall not be well and sufficis 17 R.a. cap 4. ently troden, rubbed, and well fanned, whereby there may be conveniently fan-

ned out of one Quarter thereof half a peck of bult, oz moze.

Bo perfon thall mingle any Palt not being well and fufficiently made, 01 2 E.6. cap. 10. being made of mow burnt or spired Barly, with other good Balt, and after put the fame to fale. All thefe be mala in fe, and punishable by the Common law.

And this feature of 2 E. 6. bath added a penalty, if the fuit be brought upon this flatute. And if the Biewer put to fale any beer, which he hath brewed with mlawfull (as all is unlawfull that have not the qualities forefato) and unwholes fome Malt, he may be presented for the same in the Leet, sc, as selling of corrupt and uniwholfome viduall. And by this fratute power is given that the 311 2 E.6. cap. 20. fices of peace in every of their Sellions, and also the Steward in every Leet hall bear and determine, as well by presentment of 12 men, as by accusation of information of two bonest witnesses of, for, and upon all and every the offences and forfeitures in that Ad. 4. So as the Justices of peace or Stewards in Leets, may either proceed at the Common law or upon this statute. It is further probided by this Act, that the Bailiffs and Confables of every Bozoughand Parket fown or other Town where Palt thall be made or put to fell, thall from time to time fearth and furbey the fame; and if the fame be found to be evill made or mingled with evill spalt, they by the advice of one Justice of peace thall cause the fame to be fold at fuch reasonable price, and under the common price in the market, as to his discretion chall seem expedient. This Act extends not to the mas king of any Halt for a mans own provision for his own bouse or family. And the offences against this Ad are to be presented within a year.

This Act of 2 E. 6. cap. 10. is continued, and pet frandeth in force. 27 Eliz,

cap. 4. 1 Jac. cap. 25, &c. 4 Car. cap. 4.

That which hath been fato (de malis in fe) of Palt, may also be applied to Hops another ingredient into Beer, and punishable by the Common law. But against divers and many falsehoods practiled in packing of forein Hops, for that the subjects of the Realm have been by reason thereof of late years abused and deceived unto the value of 20 thousand pounds pearly at the least (for that in sacks of forein Hops there is not found one third part to be good and clean Hops, the rest being drosse and foile,) A good law is made Anno 1 Jac. and every person 1 Jac. cap. 18. offending therein thall forfeit the same Hops so brought into the Realm. And it is further enaced by the same Ad, that it any betwer of Beer of Ale chall imploy and fpend any Hops unclean, corrupt, or mirt with any powder, duft, droffe, land, or any other foile whatfoever, he thall forfeit the value of those Boys so imployed, to be recovered, to in any of the Bings Courts of Record,

The reason wherefore these Courts of the Tourn and Leet are Courts of Recold, and not the Courts of the County, of the Hundled, and of the Court Baron F.N.B. 82. (whereof we thall nert in order treat) to, for that the Tourn and the Leet are infituted for the Common-weal, as for confervation of the Bings peace, and punichment of common unfances, tc. And for conferbation of the peace, the She riffe in the Tourn, and the Steward in the Leet may take Recognifances for

Garguliones.

1 R.3.cap.11.

12 E.4.cap.2. the

teth who shall

garble them,

keeping of the peace. But the faid inferiour Courts of the County, Hundred, and the Court Baron have jurisdiction of private causes under the value of 40 s, between party and party.

--- Fuit hæc sapientia quondam Publica privatis secernere, sacra profanis,

And foraimuch as unclean, corrupted, and mingled Spices and Drugs be for uniwholesome and hurtfull, as they tend to the jeopardy of mans body, we will hereunto adde the exposition of the statute of 1 Jac. cap. 19. the penalty of Spices not garbled.

Whereas heretofore great deceits and abuses have been committed in uttering, selling, and putting to sale, sundry sorts of uncleane, corrupt and mingled Spices, &c. garbleable: to the jeopardy of his

Majesties person, &c.

Garbleable.] To garble, Agnifieth in our legall understanding, to so ber and divide the good and sufficient from the bad and insufficient; and extended not only to Spices and Daugs mentioned in our statute, but to other wares and merchandizes. As so, example. By the statute of 1 R. 3, it is provided that no Bowstaves shall be sold ungarbled, ac. that is, untill the good and sufficient be severed and divided from the bad and insufficient: and this garbling of Bows bath reference to the statute of 12 E. 4. cap. 2. where garbling of Bows is well expounded, that is, that the Bowstaves be searched and surveyed, ac. and that such as be not good and sufficient be marked, ac. Some think that it is derived from the French Aerb, Garber, to make sine, neat, clean, ac. Others setch it from Cribler and that of Cribrare to sist of sever the good from the bad, unde Cribrum, sic dictum, quia crebris pertusum est foraminibus ad res purgandas à polvere & immundis (unde Cribrarius, the Barbler) which wellagreeth with our Act.

A Site t to fift do come from the Sarons, viz. pip, pipe. This Ad constitution a Boog. In the Breamble it is rehearled. That unclean, corrupt, and mingled Spices, Drugs, Wares, and Merchandiles garbleable do tend to the jeopardy of his Majesties person, and of his subjects using the same in their meats, drinks, and other needfall occasions, &c.

The felling of such unclean, corrupt, and mingled Spices and Drugs used in meats, and drinks, is malum in se, and (as hath been said) in divers like cases punishable by the Common saw. But this Act tendeth to the prevention of such deceipts and abuses, by garbling and purifying of the same before they be sold, and by punishment if they be sold before they be garbled and purified.

All that is garbleable must be garbled and cleansed and sealed by the Barbler before sale, upon pain of forseiture of the same or value thereof, so, which an Acti-

on popular is given.

There he 32 kindes of Spices and Daugs by speciall name mention ned in this Ad, viz.

1 Pepper, 2 Cloves, 3 Space, 4 Putmegs, 5 Cinenamon, 6 Ginger, 7 Long-pepper, 8 Aoyme-sceds, 9 Compn-sceds, 10 Anpseeds, 11 Coliander-sceds, 12 Bynny-pepper, 13 Almonds, 14 Dates, 15 Gals 16 Spiknard, 17 Galingall, 18 Aurmerick, 19 Setwell, 20 Casia-situla, 21 Ginny-pepper, 22 Seme, 23 Barbaries, 24 Rice, 25 Crins, 26 Stavesacre, 27 Calamus, 28 Fennyrick, 29 Casia, 30 Lignum, 31 Graines, 32 Caraway-seeds.

And in generall words, 1. Gums of all forts and kinds garbleable. 2. All other Spices, Drugs, Wares, and Perchandizes garbleable.

Be it furthermore enacted, that if any of the said Spices, Drugs, Wares, or other Merchandizes be mixed with * garbles, matter or thing whatsoever after the same be garbled, &c. That then the said Spices, Drugs, &c. or the value thereof shall be wholly forfeited.

* Nota, Garbles fignifie the dust or soile or uncleannesse that is severed.

It shall and may be lawfull for the Garbler of Spices, &c. within the City of London and the Liberties of the same, &c.

There hath been of ancient time an Officer in London and the Liberties of the same, called the Barbler of Spices, tc. who may make his Deputies. And this Act giveth him authority at all and every time and times * in the day time to enter into any Shops, Warehouses, or Seller, to view and fearth such Daugs,

Spices, tc. and to garble and make clean the fame.

There is a Proviso, that if any Merchant or other person (other then Merchants alien, or made or to be made Denizen) shall bring any Spice, Drugs, or other Merchandizes garbleable into this Realme, and shall not offer the same to sale or sell the same within this Realme, &c. and shall transport the same bona fide within eight moneths (accounting 28 dayes to the moneth) after his first landing, &c. shall not incurre any of the penalties of this Act.

And this Provilo was added in respect of a general law made in 16R. 2, 16R 2.cap.i. that no manner of Spicery, after that it be brought into the Realm, thall be carried out of the same by Atien of Deniser, upon pain of forfeiture of the same, And this Provide extendeth only to the naturall born Subjects, and not to oper-

thants alien, or made or to be made Denifens.

And by the Act of 16 R. 2, cap. 1. It is enaced, that Aliens that fell Wires by whole vellels, and fpicery by whole vellels and balls, and in no other manner. The Court of the Leet map inquire of these offences following by authority of

Parliament.

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De visu franc. Articles of the Leet, to which we will adde Concerning tracing and killing of Bares.

Of Hoftlers making Horsebread under the affice.

Of breeders of Worles under Cature.

Df Artillery, Butts, and Bows.

Concerning thooting in Croffebolus and Handauns.

Concerning Miduallers, Artificers, Wookmen, and Labourers.

Against great prices and ercesse of Wines.

Ho; amendment of Digh wayes. 2 & 3 Ph. & Mar. cap. 3. 5 Eliz, 13. 18 Eliz. 9.

Concerning Bulters.

For the preferbation of the spalon and fry of Fish.

Against taking of Phelants and Partriges.

Against the erection of Cottages and Inmates. Hereof fee before in this

Chapter.

By these and divers other Ads of Parliament the jurisdiction of this Court of the Leet hath been much increased, to the end that the Subject might have remedy and justice at his own dozes : and therefore it is requisite that the Steward of this Court be learned in the law, for Ignorantia Judicis eft calamitas See Rot. Parl. 5 . E. 3. nu. 46. concerning Taberners.

The tiple of this Court of the Leet is, Curia vifus franc' pleg' rent' apud B.co:

ram A B. Seneschallo, &c.

Francus plegius Saxonice phehonoth Freboroe, Anglice, Freepledge.

The Constables or petty Constables are chosen by the Common Law at the 3 H. 4.9.10 E. 4.17 Leet of Torn, and are by the Common law conferbators of the peace, and may take furety of the peace by Obligation, and are as ancient as Toins of Leets be, and began not about the beginning of E. 3. as some have supposed. Vide the Chapter of the Hundred Court for the Cheif Constable, & 9 E.4.36.5 H.7. 6. 11 H.4. 12. 38 E.3.3.

But, to fay once for all: Repetition without addition is but loffe of time, and

altogether unprofitable.

* This had been implyed if it had not been expres-

18 E.a. De vifu 14 H.8.cap 11. 32 H.8. cap.14. 32 H.8.cap-13. 33 H.8.ca.8,9. 33 H.8. cap.6. 2 E.6. cap. 15. 7 E.7. cap.5.

4 & 5 P.& M.c. 3 1 Eliz.17.1 Jac.25 13 Eliz. cap. 10, 31 Eliz.cap.7.

44 E.3. bar. 202. 32 E.z.ib.259. 46 E.3. 10.214. Vid. Rot. Parl. 6 E.3.post.nu.6. Fitz. Juft. of Peace 173. 3 E.3. cor. 288. 12 H.7.18. Fineux

CAP.

CAP. LV.

The Court of the County.

See the fecond part of the Inst. Mag. Cart.ca.35

Lib. 6. fol. 12.
Jentlemans cafe,
Stat. de Merton
cap. 3. 44 E.3.10.
2 part of the Inft.
Mag. Cart ca.35

F.N.B.119.g.h. 1b.85. g.&c. & 138.b.&c. The Style of this Court is: Buck. Curia prima Comitatus E. C. Militis vicecomitis Com'pradict' tent' apud B. &c. And the next Court Curia feeunda E. C. vicecom' Com'pradict' &c. And to forth.

See the flatute of W.2. cap. 36. against procurement of Suits in this Court. This Court is no Court of Record, and the suitors are the Judges thereof. But in a Redisseison the Sheriffe is Judge by the flatute of Perton cap. 3. and a Writ of error lyeth of his judgement.

Of the antiquity and jurisdiction of this Court, you thall reade in the flatnic of Magna carta, cap. 35. It holbeth no plea of any bebt og bamages to the balne of 40 s. 02 above, not of any trespatte bone vi & armis, because a fine is due there. by to the Iting. But of bebt, betinue, trespalle, and other actions personallabobe 40 s. the Sheriffe may hold plea by force of a Wirit of Jufficies to him directed, for that is in nature of a Commission to him, and is Vicouncel, and not reforms ble. And he may before any County Court award a Summons to his Bailie retornable within 2 or 3 dapes at his discretion, to summon the defendant by his goods, ac. to answer; and if the Bailte retoine Nihil, and the plaintif removeth the fame by a Pone into the Common place, that Court thall not grant a Capias, for the nature of the Wirit both not warrant a Capias, and the Sheriffe could not grant the fame, neither both the Wirit of Justicies after the nature of the Court of the County, for therein the Sheriffe is not Judge, but the Suitors; and upon a Indgement given therein a Writ of falle judgement both lee, and not a Writ of erroz. And in others Reall actions a Warit of Justicies both lee as it appeareth in our books, as in Bre D'admesurement of dower of pasture, in Customs & services, Meine, Quod permittat, Rationabilibus divisis, Sect' ad molend', De nuifans, de Curia claudenda, Annuity, &c.

In the County Court upon the Erigent after 5 exact, the Cozoners give judgement, Ideo utlagerur per judicium Coronarorum. But by this Judgement no goods are forfeited before the Dutlary appear of Record: and that is the reason, that no man can claim the goods of Dutlains by prescription. Reither shall such an Dutlainry disable the party: but if upon a Cerciorari to the Coroners they certifie the Dutlainry, this shall serve the king for the sorfeiture of his

goods, but thall not disable the party till the Erigent be retoined.

4 Eliz Dier 222.

CAP. LVI.

The Court of the Hundred.

His is no Court of Record, and the Suitors be thereof Judges. Of the a pare of the Inft. antiquity and jurifoldion hereof vide Magna Carra, ubi fup. And as the Leet was derived out of the Tourn for the ease of the people, to this Court of the Bundged for the same cause was derived out of the Court of the

County, and is a Court Baron in his nature.

By the statute of 14 E. 3. Hundleds (ercept fuch as then were of estate in fce) 14 E.3. cap.g. are rejoyned (as to the Bailphoick of the fame) to the Counties, and all grants 4 E.3. cap 15. made of the Bailpivick of Bundgeds fince that flatute are boid, and the making of the Bailiffs thereof belong to the Sheriffe, for the better execution of Juffice and of his Office. And fo it was refolded by the Lord Treasurer Lea and all the Barons of the Erchequer, and to becreed in the Erchequer Chamber, between Forcefeve of Buckinghamfhire plaintife, and the Sheriffe of the fame befendant, Term. 2. Caroli Regis, the plaintife babing of late bibers Hundreds granted to him for life in the County of Buck. referbing a rent, which the Sheriffe Difalbived and put in Bailiffs of his own. And a commandement was given by the Court to the Attorny Benerall to avoid the like in other Counties, for that thep mere against law, and belonged to the office of the Sheriffe, and were occasions of belaves and hinderances of Buffice. See the flatute of W. 2, cap. 36, againft procurement of fuits in this Court.

The fiple of this Tourt is, Curia E.C. militis hundredi fui de B.in com. Buck.

tent', &c. Coram A B. Seneschallo ibidem.

Afthere be a Bailiffe of a Liberty appointed by the Lozd of the Liberty, oz 9 E.s. Line flar, the Sheriffs Bailiffe of any Hundzed, Wapentake, or Tything, which have not Unicum. Lands of Tenements sufficient in that County, there lyeth a Writ De Balivo 4E.3.cap.9. amovendo, grounded upon the fratute of 4 E. 3. cap. 9. There are Constables Register 178. of the Humbred commonly called, thief Constables, fo named, because Consta- F.N.B. 164. b. bles of Towns are called petit Constables. These Constables of Hundreds were created by the fratute of 1 3 E.r. and their authority limited to five things. Stat. de 13 E.r. 1. To make the view of armour. 2. To prefent before Juftices affigned fuch De Winch.ca.6. defaults as they do fee in the Country about armour. 3 To prefent defaults of fuits of Tourns. 4 Df High-wayes. 5 To prefent all fuch as lodge frangers in uplandth towns, for whom they will not answer. Divers and many Ads of Parliament have given the chief Constable and pety Constable more authority and power then originally they had, which bath been well collected by others. Lambard, &c. For no Officer that is constituted by Act of Parliament bath more authority See cap. Leet for then the Aa that creates him, or some subsequent Aa of Parliament both give the pery Confable. him, for he cannot prescribe as the Officer by the Common law may, Nota 10 E. 4. fo. 17. the petit Constable was an Officer by the Common law per Cunam, Vid. 4 E.3. cap. 3.25 E.3. ca. 2. See in the Chapter of Due and Crp in the Third part of the Inflictees Due and Cry alwayes by the Common take made by the Constables of Towns, ac.

Fleta lib, 1, cap, 2, 9 De Vic' & Constabulariis, &c.

Mag. Cart.ca.35.

CAP. LVII.

The Court Baron.

See the fecond part of the Inft. Mag. Cart. co. 25.

s part of the Inft.

Dis is a Court incident to every Hannoz, and is not of Record, and the Suitors be thereof Judges, although the Plea be holden by force of a writ of right.

There is also a Customary Manno, whereof you may read in the First part of the Institutes Sect. 73. Verb. Court, &c.

And this was first instituted for the ease of the Aenants, and for the ending of bebts and damages under 40 s, at home, as it were at their ofun doores.

See there for the antiquity and institution of this Court, and the Articles inquirable therein are usuall and well known.

The title of the Court is: Curia Baronis E. C. Militis manerii sui pradicti (having the Pannozs name waitten in the Pargent) tent' tali die, &c. Coram A. B. Seneschallo ibidem.

In the reigne of E. 1. we have feen Court Rols having the Pannozs name in the margent. Aula ibidem tent' tali die &c. the Court of the Pannoz bezing so called, because it was holden in the Hall of the Pannoz: as the Court of the Parshallea is called Curia Aula Hospitii Domini Regis, because of ancient time it was holden in the Kings Hall.

CAP.

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CAP. LVIII.

The Court of ancient Demelne.

Hole Mannos are called the ancient Demelnes of the Crowne which See the fecond were in the bands of St. Edward the Confessor of William the Conquerour, and so expressed in the Book of Domestap made or begun in the 14 year of William the Conquerour; for to the finde it in Libro Rubro Scaccarii in Custodia Remem' Regis fo. 47. quod liber vocatus Domelday compositus fuit Anno 14 Willielmi Regis Conquefloris. And Radulphus Niger Monk of Cogithall in Offer in vita Willielmi Conquestoris hath these words, Annis 1081, 1082, 1083, 1084, 1085, 1086, Rex Willielmus describi fecit omnes Barones & feudatos Milites, & quot carucatas tra quisque habebat & redditus posfessionum. And Anno Domini 1081, was the 14 year of William the Conque: rour ; and this great and excellent furbey latted 6 years. And in Lucubrat' Okham it is worthily called Liber Judicatorius, because it is the only triall of ancient Demeine; against which, for the uncontrollable truth and berity thereof, there can be taken no aberment. And therefore in that refpect like the doome and judgement at Doomef-day.

In Chent' Archiepi. Cant': Sandwice in anno quo facta est hae descriptio. In Doonief pay it felte lege librum, for hereby it appeareth that it was made in the

time of the Conquerour.

All thole that hold of thele Mannors in Socage are tenants in ancient De- See the fecond meine: and they plowed the kings Demeines of his Mannos, fowed and harrowed the fame, mowed and made his spedows, and other fuch ferbices of hufbandap for the full enance of the King and his honourable houthold, maintenance of his fable, and other like necessaries pertaining to the Kings busbander. And to the end these tenants might the better apply themselves to their labours soz the profit of the Ling, they had Sir priviledges. Firat, that they hould not be impleas The priviledge ded for any their lands, ac. out of the faid Mannor, but have juffice administred to them at their own doze by the little wait of IR taht close directed to the Wailiffs of the Kings Manno2s, or to the Lord of the Manno2, if it be in the bands of a subject; & if they were impleaded out of the Mannoz, they may abate the Warit. 2 They cannot be impannelled to appear at Weltm. oz elsewhere in any other Court upon any Inquest of triall of any cause. 3 They are free and quiet from all mannoz of Tols in Fairs and Markets for all things concerning busbandip and fostenance. 4 And of Taxes and Tallages by Parliaments, unless they be fpecially named. 5 And of contribution to the expences of the Anights of the Bar: liament, ac. 6 If they be severally distrained to other services, they all for fabing of charges may joyn in a Wirit of Monfraverunt, albeit they be feverall Tenants.

These priviledges remain fill, although the Mannor be come to the hands of Subjects, and although their fervice of the plough is for the most part aftered and turned into money: Averain Domesday Grentbrigsh Rex fordham, sed tamen semper invenit averam vel 8d. in servicio Regis, that is, a bapes work of a Ploughman, oz 8 d.

This Court is in nature of a Court Baron, wherein the Suiters are Judges. and is no Court of Record, for Brevia Claufa Recordum non habent.

Nota, the Demandant in a wait of Right Close cannot remove the plea out of the Court of the Lord for any cause, the Tenant may remove the same for 7. causes, viz. 1. For that he holdeth it ad Communem legem. As it a fine and recovery be levied or suffered thereof in the Court of Common pleas, this maketh part of the Intit. W.z. c.31..f. 546

Sec 11 E.3.32.

Herein Fitz. in his N.B. fo 16. ascribing it to Edw. the Confellor, was de-ceived. Vid. the Preface to the third Book of my Reports.

part of the Inft. Artic, fup, Cart,

of tenants in ancient demefne,

Regist.fo. 17 E.3.44. F.N.B.13.c. 41 E.3.22. 49 E.3.7. 50E.3.14 1 Domelday Sape ber ciare, or berfeare of the French word[berfe.] a Vid.li.s.fo.1cs. Al'ens case. 44 E 3.38. 46 E.3.1. 49 E.3 7.44 E.3. 22. 21 E.3.10. 32. 40 E 3.4. 28 E.3.95. 34 E. I. And demeine 98. 21 E.4. Anc' demefne 6. 22 Aff. 45. F.N.B.136.k. 30 E.3.12. 1 2 Bis. Execut. 118. 15 E.3. ib.62. 8 E.240. 136. 7 HA.19. Lib. 5. fo. 105. 19 H 6 64. c 4 E.z Kediffei. fin 9. d7 H 6.35.8 H.6. 34. 32 H.6.35. F.N.B.189.g. Lib.5.fo.105. Allens cafe. 22 El Dier 373. 7 H.7 11. e 2 E.4.26.8 E.4. 6. 7 H.4.44. 8 H.4.24.17 E.3. 31. Tr.16 E.3. Cora Rege Rot. 132 Eborum. Tr.13 E.3.Cora Rege Rot. 108. Glouc'(finis.) Tr.3 H.5. Cora Rege Rot. 9 Effex (finis) 21 E.3.20. 56. 21 All 4. 26 E.3.63. f Vid. Dier 22 El. 373. \$ 3 E. 3.9.F.N.B. 19 d. b Dier 21 El. 373. 27 Aff. 5 44 F.3. 38.

21 E.3.32.

the land frank fee so long as they stand in soice. 2. If the land be not holden of the Panno; being ancient Demesne. 3. If the land be holden by knights service: for, as hath been said, the service of the Plow and Husbandry is the cause of the priviledge. 4. If there be no suitors, or but one suitor, for that the suitors are Judges, and therefore the Demandant must sue at the Common law, for that there is a failer of Justice within the Pannor. 5. If the Tenant accept a release of his Lord of his seigniory, or the seigniory be otherwise ortinguished by reason of the seison of the king or otherwise. 6. Dr if the Lord disserted his Tenant and maketh a seoffment in sec. 7. If the Lord grant the services of his Tenant, and the Tenant atsorn.

t Arabant & herciabant ad curia domini. i. they bid plough, and harrow at the

Mannoz of the Lozd.

a And this priviledge doth not extend to meer personal actions, as debt upon a Lease. Arespasse, Quare clausum fregir, and the like, in which by common intendment the title of the freehold shall not come in debate. But otherwise it is of all real actions, and also in actions of Account, Replevin, Ejectione firms, wait of Mesne and the like, where by common intendment the realty shall come in question.

Lands in ancient demeine are extendable upon a ftatute Berchant, Staple

Clegit, and regularly all generall Catutes ertend to ancient bemeine.

But a Redicteicn, although they concern the realty, both not lie in ancient bemelne, because the proceeding in a Redicteicn is appointed by the statutes to be made by the Sperif, assumptis secum Coronatoribus Comitatus, &c. and in ancient demesne there are no Coroners, d but otherwise it is in an action of Wast.

And as the Tenants in ancient Demelne are carefull to preferve their priviledges, so the Lord is as carefull to preserve his seigniory, and the tenure of this tenancy in ancient demelne. And therefore if the Tenant levy a five, or suffer a recovery in the Court of Common pleas. Ac. whereby for the time the land is become franksee, the Lord by a writt of Disceit may not only restore himselse to his true seigniory, but utterly avoid the fine, and restore his Tenant against the recovery and his own fine to the land again in his sommer estate: and the reason thereof is, for that the recovery or fine was not suffered or levied before a competent Judge in the right Court, which ought to have been in the Court of ancient Demelne, and therefore after the reversall in the writt of Disceit, it is now tanguam coram non Judice, and the parties to the fine or recovery shall be fined and imprisoned pro deceptione Curix.

But it in a writ of Right close in ancient Demesne, the Demandant maketh his protestation to sue in the nature of Assic of Pord, the Tenant plead in abatement of the writ, and the writ by judgement is abated, the Demandant brings a writ of false judgment, wherein the writ is affirmed to be good, the Court of Common pleas thall proceed as the inferiour Court should have done, a although that judgment be given to recover the land in the Common place, yet the land is not franksee, but remains ancient Demesne, because the beginning

and foundation thereof was in ancient Demefne.

h They may leby a fine in ancient Demesne which by the Tuftome it is said to

be a bar of the estate tail; but certainly that will not hold.

136 the Tenant remove the plea to, the cause mentioned in the Recordare, he may come into the Kings Court, and assign other cause, and twenty, if he hath, to maintain the jurisdiction of the Kings Court.

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CAP. LIX.

The Court of the Coroner.

His Cozoner Coronator is so called, because he deals principally with Regist. 172. Pleas of the Crown or matters concerning the Crown : Be is eligible F.N.B. 164. by the Freeholders of the County, and fo continues to this day, as of ans tient time the 'Sherif & Conferbators of the peace were, because the people had agreat interest and fafety in the due erecution of their offices, and fo long as they were eligible, they continued, not with franding the demile of the Bing, as the Toconer both to this day. And of ancient time this office was of great estimation , a Ro. Pat. 1 E.I. for none could have it under the degree of a knight. And it appeareth by the watt De Coronatore eligendo, that he must have two properties, viz. sufficient knows ledge, ability & diligence in execution of his office implied in thefe woods, Eccale eligi facias, qui melius fciat, & poffit officio illi intendere. And the Sherif after he be eleaed, Chall give unto him his oath duly to execute his office: and the Court which be holdeth is a Court of Record. And commonly there are four in every County of England; but in the twelve thires in Wales, and in Chethire there

Row concerning his jurisdiction , what it was before the fatute of Magna Carra, and what he hath at this day, and of his Antiquity, you may read in the Second part of the Inflitutes, Mag. Cart.cap. 17. and the Exposition upon the same, Merton cap. 3. Rediffeifin, and W. 1. cap 10. & 26, & Artie, super Cart, cap. 3.

and the Expolition of the fame.

He is to take nothing for boing his office upon griebous forfeiture, but by 3 H.7.he is to have upon an indiament found of murder 13 s. 4d. of the goods of the murderer, and if he hath nothing, of the amerciament of the Township for the escape, sc. See also the ancient Authors, Mirror des Justices, Cap. t. f. del office del Coroner. Bracton Lib. 3, fo. 121,122,123. Britton Cap. 1. Fleta.lib. 1.ca. 18. Statutum de anno 4 E. I. de officio Coronatoris, and Stanf. Pl. Coronz fol. 48, 49,50,8c.

And as the Sherif in his Tourn may enquire of all felonies by the Common law, faving of death of man, fo the Tozoner can enquire of no felony but of the beath of man, and that fuper vifum corporis : De thall also enquire of the * escape of the murberer, of Treasure Trobe, Deobands, and Wrecks of the Sea. But bereof you thall read more in the Authorities before cited, and in the Third part

of the Inflicutes, in the Title of Appeals.

De ought to deliver the Inquilition of death taken by him at the nert Baol. deliverp, or certific the same into the Kings Bench, * Apon an Inquisition found before him of murber or mandaughter he ought to put in writing the effect of the shibence given to the Jury befoze him being materiall, and hath power to binde over witnestes to the nert Baol-delivery in that County, See before in the Chaps ter of the Courts in London.

To conclude, belides his judiciall place, he hathalfo authority ministeriall as a Sherifite. viz. when there is just exception taken to the Sherif, judiciall processe thall be awarded to the Coroners for the execution of the kings write, in which cases he is locum tenens Vicecomitis, and in some speciall case the kings Pl.Com.

originall writ thall be immediately directed unto him.

In defectu Vic' pro brevibus Regis exequendis, videtur Curia hic, quodaliis quam Coronatoribus non est demandand'. Vide Vet. Mag. Cart. parte 2. fo, 19, 20,21, Stat' Exonia, Fleta Lib. r. Cap. 18.

* Artic.fur. Cart. cap 8. & 12. 11 R. 2. cap. 2. 14 E.3.cap.7. Lambard Juffice of Pca o. 16.b. & Regist 177. F.N.B.164. Stanf. 48.c. W. 1.cap. 10. 6 14 E.3.ca.8. He must have sufficient land in the County whereof hemay answer all people. F.N.B. 164. 34 H.8. 35 H.8. cap. 13.

3 H.7.cap.z.

Ver. Mag Carr. 4 E-1.part.1.119. Stanf.49.e.f. 35 H.6 32.

3 H.7.ca.1. 4 E.I.ubi fup.

3 H.7.ca.1. 1 & 2 Ph & M.

Pafch.g E.z.Coram Rege Kot. 80. Ebor. Weftre.

CAP. LX.

Brack.1. 5.f.334.2 The Court of Pepoudres, vulgarly Pipowders, Curia Pedis pulverifati.

Dis Court is incident to every Fair and Parket, as a Court Faron to a Pannoz, and is derived of two Latin words as is apparent, and so called, because that so contracts and injuries done concerning the Fair of Parket, there shall be as speedy justice done so; advancement of Trade, and Traffick, as the dust can fall from the soot, the proceeding there being de horain horam. And therefore Brackon saith, Item properera qui celerem debent habere justiciam, seut such such can faith, and there so can saith, as the dust mercatores quibus exhibetur Justicia Pepondrous, &c.

Brad.1.5.f.33 4.2

6H.4.3.6 E.4.
3.b. 7 E.4.23.
Li 6·10.12.2.
& 20.
* See before
Cap. Justices
in Eire. simile
pag.185.

«Mic.42 & 43 El.
Coram Rege,
Lib.10.60.61.En
le case del Marshalsey Jones
çase.

This is a Court of Record to be holden before the Steward of the Court, and the jurisdiction thereof confifteth in Four conclusions. 1. The contract of cause of action muft be in the same time of the same Fair or Barket, * and not before or in a former, 2. It must be for some matter concerning the same fair or Market, bone, complained on beard and betermined. 3. It muft be within the precina of that fair o; Parket. 4. The Plaintif muft take an oath according to the statute of 17 E.4.cap.2. but that concludeth not the Defendant. And all this was refolved, adjudged in a wait of Erroz brought by Hall against Jones, and the cafe was this: Jones being Register of the Bilbop of Blonc'sbrought an Action upon the rafe in a Court of Pipowders belonging to the Barket in Blowcefter against Hail for theis words; Pafter Jones and his Clerks habe by colour of his office ertosted and gotten 300 l.per annum, by unlawfull means for many pears together above their ordinary fees , for proving of Teffaments and granting Administrations. And not guilty being pleaded, sc. it was tried and abjudged for the Plaintif; and divers errors were alligned, but the judgment was reverled for thefe errors following. 1. That this Court of Pipowbers , being incident to the Parket, bath no jurisdiction but of fuch things as concern the Market; and thefe flanderous woods bid in no fort concern the Market: but if one flander the wares of any in the Parket, whereby be cannot make fale of them, an action both lie in that Court. 2. It appeared in the Record that the words were spoken the day before the Market; and no action lyeth in that Court but for an injury within the jurifdiction of the Court done, complained on heard e betermined on the same parket day, the proceeding being de hora in horam, and within the precind of the Market. And herewith agreeth 3 Mar. Dier 132. And it was resolved that this Court was incident as well to a Warket as to a Fair.

And there may be a Court of Pipowders by customs without Fair or Parket, a Sparket without an owner. Another Error was assigned, for that it is provided by the distances of 17 E.4. and 1 R.3. that no plea shall be holden in the Court of Pipowders, except the Plaintist or his Atturny will make oath, that the contrast or other deed contained in the Declaration was done or committed within the time of the Fair: but this Error was disallowed by the Court, sor although this ought to be done, if the Desendant will sand upon it, not with standing it

thall not be made part of the Record

Vide Lib, Intrat.Rast.fo.464. Pipowder 1,2. fo. 18, Execution 3. fol, 158. Gaoler 1.

67 H.6.18,19. Kelw.23 H.7.99. Do 3. & St.to. 11. 3 Mar. Dier 132. Int' Hall & Pinder. 45 E. 3 1. 1 H.4.6. 13 H.7. 19.b.12 H.7. 16,17. 6 13 E.4.8.b. 8 H.7.4.5. 12 E.4 9 19 H. 8. Br.incidents 34. 12 H.6.3.b. d17 E.4.C.2. 1 R.3.cap 6.

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CAP. LXI.

The Court of the Clerk of the Market.

tis to this day called Clericus Mercati Hospitii Regis, for of ancient Briton fo.75.b. time there was a continuall parket kept at the Court gate, where the Flera 1.2.c.20. Ling was better ferved with Alands for his houhold then by Durbey. ors, the subject better used, and the King at far less charge in respect of the multitube of Burbeposs, tc. And the Officer of the Barket of the Bings bouthold retaineth his name fill, although the good end thereof according to the first infitution cealeth.

The b Clerk of the Barket chall hold no plea but fuch as were holden in the reign of E. 1. And at this day there is no great need of him, for the Juffices of Agife, the Justices of Oier and Terminer, Justices of Peace, and the Sherifs in their Tourns, and the Loads in their Leets, may and do inquire of falle weights

and measures.

· De both keep a Tourt and inquireth of weights and measures whether thep be according to the Bings Standard or no , and for that purpole be maketh procelle to Sherifs and Bailifs to return Pannels befoge him, tc. d And be is to reliver the Eftreats of those things which touch his office into the Erchequer.

. Df Daink (that is to fay) of Taine, Ale, and Beer, and of Coan and Brain there ought to be but one measure: Una mentura Vini, Cervifiz & bladi, Virgz, 15 8.2. and of all other merchandise per totum regnum. De ponderibus vero ficut de Mag. Car. c. 25. menfuris.

Rot. Par 50 E.3. nu.87.& 152. 13 R.2.cap.4. 22 H 8, cap, 20, 17 H.8.ca, 24. Lib.In. Co.445. a See the 2 part of the luftitutes, 28 E.r. Artic.fup. Cart.ca.s. and the Exposition thercupon. b Rot. Parl. 8 H.4.nu. 82. c 16 R 2,c2.3. d Stat.de modo mittendi extract. in Scaccarium. Anno 16 E.1. & 27 E.3.ca. 10. 25 E.3.cap.g.

14 E. 3. (a. 12. 13 R. 2. (ap 9. 15 R. 2.4. 16 R. 2. (ap. 3. 9 H. 5. (ap. 8. 11 H. 7. (ap. 4. 12 H. 7. (ap. 5. 1 H. 5. (ap. 10.

But notwithstanding these statutes there be within this Realm two kind of Weights. weights, the one called Trop weight, which is commanded by the fatute, and this derived from the grain of coan of barly from the middeft of the Car and dip. 24 of thefe coins of grains make a penny weight, and 20 of thefe penny weights make an ounce, and 12 ounces make a pound Trop. A grain contains 20 minutes, a minute contains 24 Dioits, a Dioit contain 24 blanks. 12 grains of fine gold make a Caret, 24 Tarets of fine gold make an ounce, and 12 ounces make a round of fine gold. By this Trop weight are weighed according to

law pearls, precious stones, gold and filver, bread, wheat, and fuch like. There is another kinds of weight called Aver de pois. A poimd of this confisteth of 16 ounces, every ownce having 20 penny weight, every penny weight i grains, and is of a grain. It is called Aver de pois, because thereby they have full measure. Hereby are weighed all Physicall dangs, War, Witch, Tarre, Iron, Steele, Lead, Bemp, Flare, Fleth, Butter, Cheefe, and dibers other commodities, but specially every commodity subject to wast. There was another weight called the Auncell or Ansell weight, which was when the Beales were fired to a beam of Caffe, and he that weighed by it, used his forefinger or hand in the middeft, wherein was great deceipt, and therefore is put out by the fratute of 25 E.3. cap. 9. 34 E.3. cap.5. 8 H. 6.cap.5. It is derived ab Anfa, which is the handle of the ballance, and this weight was guided by the hand.

Deafures of Tropbe of three kinds, viz. of things that be dip, of Liquo, and of Mea-T DE Sures. of Longitude, Latitude and profundity.

Trutina Capana. Ordinatio menfurar' 31 E.3.

The Court of the Clerk of the Market. Cap. 61.

Ordinatio menfur'. 31 E.I. ubi fup.

Df day things, 4 grains make a penny weight, 20 penny weight make an ounce, 12 ounces a pound or pinte (for a pound weight is a pinte in measure) two pounds or pintes make a quart, two quarts make a pottle, two pottles make a gallon, two gallons make a peck, four pecks make a buthell, four buffels make a Combe, two Combes make a Quarter, fir Quarters make a Wey, and ten Anarters makea Laft.

Df Liquo; 12 ounces make a pound, 8 pound make a gallon of wine, 8 gallons of wine make a Bulbell of London, which is the 8 part of a Quarter.

Df wine fee the Statutes of 1 R.3.cap.13. 28 H.8,cap.14.

the Ferkine the littoerkin 16 Gallong. Df Ale and Beer the Barrell the Bouten 63 Et ficde cateris. (or Duarter)

See Affila Panis & Cervifiz. 51 H.3. Vet.Mag.Cart. fo.31,32.2 part. Ibidem 44.b. Compositio ulmarum & perticarum Vet.Mag. Cart. 2 parte 45, 46. Anno 31. E.1. Statut' de terris mensur'.

See the Statute Compositio de Ponderibus. Statut' de Pistoribus, Vet. Mag. Cart. 2 parte 23,24. Statut' Panis & Cervifiæ.

Df Longitude, Latitude, and profundity. 3 grains of barly in length make an Inch, 12 Inches make a foot, 3 foot make a pard, a pard and a quarter make an Ell, 5 pards and a half make a Perche, 40 Perches in length make a Furlong, 8 Furlongs make a Dile.

I map fpeak of the Sellers the by weight of Aver de poys, as Tacitus fpake of the Augures in Rome. Hoc genus hominu femper vitabitur, & semper in Civitate retinebitur.

But now let us fee what fees the Clerk of the Parket ought to take. By the fratute of W.I. cap. 26. it is enacted that no Sherif og other Binifter of the Bing thall take any reward for doing his office, tc. And the Bings Clerk of the Parket is the Kings Pinifter, and therefore he is within the purvien of this fatute.

I find that in 8 R.2. in open Parliament a Groat was allowed to him for marking and fealing of every buthel, 2 d. of every half buthell, 1 d. of every peck, and so according to that rate.

By the statute of 7 H. 7. the chief Officer of every City and Bozough shall take for fealing of every buthell a penny, of every other measure a half penny, of every hundred weight i d. and of every half hundred ob, and of every weight

under, a farthing, and not above. The Clerk of the Warket in the reign of Queen Eliz. claimed by cuffome for

the eramination and view of every bulbell fealed before by the Clerk of the Barket, whether it were lawfull of unlawfull 2 d. and in like manner of every leffer measure of wood 1 d. and in like manner of Inholders measures 4 d, and of the measures of Aiduallers 2 d. and divers other fees to; eramination and viewing of weights and measures whether they were lawfull or unlawfull, as is afore faid. And it was refolved by all the Judges of England, that no fee was due to the Clerk of the Parket for view and examination only of weights and meafures for three causes. 1. The faid Parliament Roll of 8 R. 2, alloweth a fee for fealing, and fo both 7 H.7. and 11 H.7. but no allowance for view or eramis nation. 2. The weights and measures are either true, according as before ther were fealed, og-falle: if true, it Chould be against reason to charge the innocent, for that were disperdere justum cum impio; if falle then by the statute of 13 R.2. they ought to be burnt, and the end of the view teramination is to find out fallhood, to the end they might be punished, and fined to the King, as appeareth by the Catute of 13 R.2 . but no fee is to be taken therefore. 3. Whereas the Clerk of the Parket affirmed that thefe fees had been of long time taken, the Judges faid, that malus ulus abolendus elt, and the taking of fees for view and eramination only was ertortion, and that they could not prescribe against the said statute of W.1. See in the 2. part of the Institutes, the Exposition of the said statute of W.r.

By the faid fatute of 13 R.2. he ought to take no common fine, for before that

W.1. An.3 E.1. ca.26.

Rot. Par. 8 R. 2. nu.II.

7 H.7.ca.3. 11 H.7.cap.4.

13 R.z.ca7.4. 38 Aff.p. 11.

Catute

statute he did use to take a reward (which the Act tearmeth a fine) so, not inquiry of defaults, whereby the king was prevented of his fine, the delinquent not punished, the people wronged by extortion, permission of sale measures: and therefore the Act provideth that no common fine shall be taken, as is aforesaid, but that every person which is found in default touching the same office be punished according to his desert. And the Clerk of the Parket cannot set any price of any thing saleable in the Parket, so, that belongs not to weights and measures; and by the Common law Arbitrio Domini resæsimari deber, which cannot be altered but by Parliament; and again, Nemo cogitur rem suam vendere etiam justo precio; and things saleable in the Parket of one kinde are not of one goodnesse; but he ought to assis weights and measures.

It is enaced that good examination and correction be had in Towns infranchiled touching weights and measures, so as the * fratutes thereof made he duly

abferbed.

12 E.4.fo.8.b. 23 E.3.cap 6. 13 K.2.cap 8. 3 H.8.cap.8.

6 R. 2. cap . 13. Rot. 1 a . 37 E. 3. nu. 39. Which are before in this Chapter.

CAP. LXII.

The Court of the Commissioners of Sewers.

Ulando a aqua profluic, that is, when water doth issue, bulgarly, sue: here a Vid. Pas. be upon cometh the word Suera, for a sewer, passage, channell, or gutter of the water...

b At the complaint of Henry de Lacye Carle of Lincolne, a Commission of Seivers was granted to Roger de Brabaion Mapoz, and the Sheriffs of London.

c Their authority is by Commission under the Breat feal in hac verbarat this bay grounded and warranted by the Act of Parliament of 23 H. 8.

d Df their jurisdiction you may reade in my Reports, and see the statutes of 6H.6, cap. 5. 8 H 6. cap. 8. 23 H.6. cap. 9. 12 E.4. ca.6. 4 H.7. ca.1. 6 H. 8. cap. 10. 23 H. 8. cap. 5. & 10. 3 E.6. cap. 8. 1 Mar. cap. 11. 13 Eliz. cap. 9.

Certain necessary observations upon some of these statutes, and principally wherein the statute of 23 H.S. cap. 5. hath been explained, declared, or altered

by any of the faid subsequent statutes.

e 1 This Commission thall be granted to such substantiall a indifferent persons as thall be named by the Lord Thancelor, the Lord Treasurer, and the two Thiese Instices, or any three of them, whereof the Lord Thancelour to be one.

f 2 C very Commissioner before he take upon him the erecution therof shal take the Corporall Dathmentioned in that Ad vefore the Lord Chancelour, or such as the Lord Chancelour shall direct by Carit of Ded' Potestatem, or before the Just the Adversarian shall direct by Carit of Ded' Potestatem, or before the Just the should be nown faciental titles of peace in their Quarter Sessions, as sought to have lands or tenements of the clear yearly value of 40 Harks of some estate of freehold (ercept as in the Ibid. 284.6. De statute is excepted) upon pain of sorteiture of 40 li. and no Farmer of lands apux duciv. which is the peace of the yearly value of 40 li. and yet he not to meddle with the lands the F.N.B. 225.c. Tr. 31 E.3. fol. hath in stirce.

h 3 The avolvey of inflification for a distress taken by socce of this Tommismo Ms. from that the said distress, sc. was taken, sc. by socce of the 19 F.3. bure 279 Commission of Sewers so, a lot of tax assessed by the said Tommission, of so, et 3 H.8.c., s. 10. such other Act of cause, sc.

4 There must be fir Commissioners, ic. at the least, which shall lit by force of the faid Commission.

5 k That the fait Ad of 23 H. 8. doth not extend to, nor give authority to the fag H.8.cap. 5.

Rot 52. Kanc' Ric' de Gras Com' de Sewa s. Vi.Regift. 287. 2. Certiorar. b Rot Parl. Anno 35 E. 1 at Carlifle c 23 H.8.cap. 5. d Lib. s.f. 99 100. Rockes cale. Lib. 10. fo. 137. Le cafe de Mi lyn de Chefter, & to. 139 Keighleys Ib 141. Le cafe de Ife de Ely. Vid.Regift.252.b chea obstruenda & nova facienda vel habenda Ad quod damr.ñ. Ib:d. 254.b. De aquæ ducir.& 255. 2. F.N.B. 225.c. Tr. 31 E.3.fol. 44 b. in libro mco MS. 19 F.3. birre 279 To whom and by whom the Commiffin fhall be

granted,

b 23 H.S. cap. 5. Lib. Intr. Coke 292.293. i How many Commissioners must fit. 4 1 Mar. cap. 11. To what nufances the Commission of Sewers extend nor.

Commissioners

Commissioners of Sewers to reform the great hart and nusance by reason of the fand rifing out of the Sea, and briven to land by frozms and winds. A special

probilion is there made for the County of Blamorgan.

3 Jac.cap.14. · nota, an excelent expolition of the flature of 23 H.8 by this Parliament of 3 Jac.

It is adjudged by Act of Parliament Anno 3 Jacobi Regis cap. 14. That Wals, Ditches, Banks, Butters, Seivers, Bates, Caufeys, Bridges, and Watercourfes in or about the City of London, " where no passage for Boats is used, not the water therein both usually ebbe or flow: which Wals, Ditches, Banks, Outters, Dewers, and other the premiles, do fall into the River of Thames, are not under the furbey, correction and amendment of the Commiffions of Sewers, not of the flatutes made for Sewers in Anno 23 H. 8, or of any other flatute of Sewers, as it is rehearled by full confent of Parliament : and therefore provilion is made that those mals, Ditches, Banks, Butters, Sein ers, and other the premiles, thall be subject to the Commission of Sewers.

6 That a Commission of Sewers thall continue ten years, unless it be revealed or betermined by reason of any new Commission, or by Supersedeas.

7 That Laws, Dadinances and Constitutions made of to be made by force of any fuch Commission, and written in Parchment indented under the Seals of the faid Commissioners or fir of them, whereof one part thall remain with the Clerk, tc. and the other part in fuch place as fir of the faid Commissioners thall appoint, thall without any Certificat, and without the Royall affent frand and continue in full force notwithstanding any determination of any such Commission by Superfedeas, untill the same be aftered by the Commissioners of Sewers after to be affigned, ac.

8 And if any such Commission be determined by expiration of ten years next enfuing the Teffe thereof; then fuch laws, tc. fo indented and fealed, tc. shall continue for one whole year. And that the Justices of peace or fix of them, where: of one to be of the Quorum, thall have authority during that year to execute the

faid lawes, tc.

9 That by the granting of a new Tommission within that year, the power of

the Justices of peace to cease.

10 The faid Commissioners thall not be compelled to make any Certificate or retorn the faid Commissions, or of any of their Dedinances, Laws, or boings, by authority of the faid Commissions.

11 See also an alteration by the fatute of 13 Eliz. concerning fees.

12 Lattly, this is certain, that neither the Commissioners of Selvers, no. any other, have such an absolute authority, but that their proceedings are bound by laiv.

Vide the ancient Committion of Sewers by the Common law in the Regi-

fter, and F. N. B.

A generall Commission of Selvers enacted by authority of Parliament, not

printed.

A generall Commission of Selvers enaced by Parliament, and in print. But the Commission by the Catute of 23 H. 8. Candeth now in force. And yet by diligent perufall of the former, and by advised comparing of them with the latter, it will manifest wherein the former defeas were, and how continually by the latter they were supplied and amended, and give a great light for the true understanding of that which now standeth.

See Hil. 13 E.3. coram Rege. Leges & consuetudines approbatæ pro reparatione murorum maritimorum & mundatione Fossatarum & Sueraru in paludibus quz hic exprimuntur per commissionem Regis ad hoc faciendum in Mershland.

a A particular Commission granted to S . Joh. de Sucton, & Sir Rob. de Scrope.

b A Committion concerning the Riber of Lee.

c Rumney Harth in the County of Bent containing 24000 acres, is at this day, and long time bath been governed by certain ancient and equal lawes of Sewers made by a venerable Juffice Henry de Bathe, in the reign of H. 3. from which laws not only other parts in Bent, but all England receive light and direation : For example : The fait generall Act of 23 H. 8. ca. 5, in the clause which

13 Eliz.cap.g. How long the Commission shall. endure. 13 Eliz.cap.9. The laws written in Parchment & indented, &c. Wirhout Ceruficat or Royall affent.

Determination by expiration.

Justices of peace.

Nota, no Certificat or retourn of the Commis-

fions or of any the Ordinances, Laws, or Doings.

Regift. 126.127. F.N.B.113,114. Rot. Parl. 2 H.6. Ru- 57 .

6 H.6. cap.5.

Stat.29 E.3.03.4. 4; E.3. cap. 2.

Hil. 13 E.z. coan Rege Rot. 55 Norf. Palc.44 E.3. coiã Rege Kot 2 Mid. e 19 E.3. tit. bar 279. 6 2 E.3. fo. 26. c The Court of Sewers of Rum-

ney Maith.

Cap.63. Of the Statute of Bankrupts.

giveth power to the Commillioners to make Statutes, Dedinances, and provifions, ac necessary and behovefull after the laws and customes of Rumney parts

in the County of Bent, og otherwife by any wayes og means, cc.

Both the Lowne and Parth of Runney took their name of one Robert Runney. This Robert (as it appeareth by the Fook of Domelday) held this Lown of Odo Bithop of Baieux, wherein he had 13 Burgelles, who for their fervice at the fea were discharged of all actions and customes of charge, except selony, breach of the peace and forestalling.

See before in the Chapters of the Courts of London, se. the jurildiction that

the Lord Mayor bath in the River of Thames.

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CAP. LXIII.

The Court of the Commissioners upon the Statute of Bankrupts.

that tetched as well the name as the wickednesse of Bankrupts from sozein pations: For Banque in the French is mensa, and a Banquer or Eschanger is mensaius, and route is a signe or mark, as we say, a Cart rout is the signe or mark where the Cart hath gone: metaphorically it is taken sor him that hath wasted his estate, removed his Banque, so as there is lest but a mention thereof. Some say it Honld be derived from

Banque and rumpue, as he that hath broken his Banque or fate.

In former times as the name of a Bankrupt, so was the offence it self (as bath been said) a stranger to an Englishman, who of all other Pations was freest of Bankruptry. And the sirst statute that we find against this crime, was indeed made against strangers, viz. against Lombards, who after they had made Obligations to their creditors, suddenly escaped out of the Realm without any agreement made with their creditors. It was therefore enacted, that if any Herchant of the Company knowledge himself bound in that manner, that then the Company thall answer the debt: so that another Herchant which is not of the Company thall not be thereby grieved nor impeached: neither do we find either any complaint in Parliament, or Act of Parliament made against any English Bankrupt untill the 34 year of H. 8. when the English Perchant had rioted in three kind of costlinesses, viz. costly building, costly diet, and costly apparell, accompanied with neglect of his trade and servants, and thereby consumed his wealth.

He is called in Latin * Decoctor, a Decoquendo, for confuming of his effate in riotous and delicate living. The faid Aa of 34 H. 8. is altered by the flatutes of 13 Eliz. cap. 7. 1 Jacobi. cap. 15. & 21 Jacobi. cap. 19.

And it is to be observed, that all the aforesaid statutes and laws made against Bankrupts, and sor relief of creditors, shall be in all things largely and beneficially construed, ac. sor the aid, help and relief of the creditors.

A Bankrupt is described by the statute of 13 Eliz, cap. 7. and 1 Jac. cap. 15. but more effectually by the statute of 21 Jac. cap. 19. So as by all these three he is perseasly described. And the Commission doth extend to all and every of the said descriptions and articles thereof.

a The authority of the Commissioners is by Commission under the Great feat; their jurisdiation and power is by sorce of the said Aas of Parliament which ought to be pursued, box else they are subject to the action of the party grieved, sor he hath no other remedy. The Lord Chancelour or Lord Reeper upon complaint made unto him in writing hath authority to grant the said Commission.

The derivation and fignification of Bankrupt.
Ciceto proFlaminio: Inquae vitate nummus neveri vultus potefi fine quinq; pretoribus, 3 pretoribus & quinq; menfariis.

25 E.3.flat.3.
cap.23.
Parl. 50 E.3.
nu.160. againft
Lombards.
* 51 E.3.nu.51.
Vid.50 E.3 ca.6.
& 2 R 2 cap 3.
flat.2. againft
frauds generally
34 H.8.cap.4.

Cicero in Catilinom: Exercitum collectum ex rustrais, mendiculis, & decoctoribus.

The description of a Bankupt.

a The authority of the Cômissioners and their jurisdiction.
b Lib 8.f.21.Int Cutt & Delabar.
c 12 Ehz.cap.7.
who may grant the Commission.

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Three qualities of every of these Commissioners.

Generall pleading. 1 Jac. cap. 15. 21 Jac. cap. 19.

*Lib 2.fo.25,26. Culla noi s cafe. Lib.8.fo 98.Bafpoles cafe. 1b. f.l.121. Int' Cutt & Delabar.

Commiss. for Examination of Witnesses. Cap.64.

The law hath provided that these Commissioners ought to have, "3 qualities, viz. wisdome, honesty, and discretion; which is it be observed, it is the best means for the due execution of the said statute, and the life of these laws doth consist in the due execution thereof: and for such Commissioners is any Action shall be brought against them, ic. for doing of any thing by force of the said statutes, they may plead generally, and not to be driven to any special pleading.

They have power to examine the offender upon oath, and after he be declared a Bankrupt, to examine his wife upon oath, and to examine witnesses also upon oath. See the flatute. And they have power to break any the Houses, Chambers, Marchouses, 4c. Arunks and Chests of such offenders. See the other parts of this Act of 21 Jacobi, which are plainly and effectually expected, and need not here to be recited.

For the exposition of the said statute of 13 Eliz. * See in my Reports lib. 2, fo.25.26. Cullamers case. Lib.8, fo 98, in Baspoles case, & ibid, fo, 121, inter Cutt & Delabar.

CAP. LXIV.

Commissioners for examination of Witnesses.

Praimuch as the Court of Star-Chamber, the Chancery in cales of equity, the Erchequer Chamber in cales of equity, the Court of Wards, and the Duchy of Lancaster do proceed upon witnesses examined before Commissioners, or in Court before the Examiners, it shall be necessary (as a matter of great importance) to say somewhat of the power, authority, and buty of the said Commissioners and Examiners, and incidently of witnesses.

The Commissioners, albeit named by the parties recipiocally, ought to stand indifferent, and bo their uttermost endeabour to find out by due examination the whole truth, and to suppless no part thereof; so, their authority is to that end meetly and wholly from the Bing by force of his Commission.

Beither Commissioner not examiner are strictly bound to the letter of the Anterrogatory, but ought to explain every other matter of thing which riseth necessarily thereupon, for manifestation of the whole truth concerning the matter in question.

Petther Commissioner not Examiner ought to discover to either of the parties of to any other, any of the depositions of any part of them, which they have taken before publication be granted.

Beither Commissioner no: Examiner after the examination begun, ought to confer with either party touching the examination, of take new instructions concerning the same.

For as much as the witnesse by his oath, which is so sacred, as he calleth Almighty God (who is truth it self and cannot be deceived, and hath knowledge of the secrets of the heart) to witnesse that which be shall depose; it is the duty both of the Commissioner and the Craminer gravely, temperately, and letturely to take the deposition of the witnesse, without any menace, discurbance, or interruption of them in hinderance of the truth, which are grievously to be punished. And after the depositions taken, the Commissioners and Craminers ought to read the same distinctly to the witnesses, and suffer them to explain themselves so the manifestation of the whole truth. And it is safe so the Commissioner and Craminer that the witnesses subscribe their names or marks to the Paper-booke, but they must be certified in Parchment.

Sce.li 9. fo. 70.71 Peacocks case, for this and some of the cases follow-

Lib. g. ubi fup.

Lib.g. ubi fup.

Lib 9. ubi fupra.

Aug. Serm. 18. de verbis Apostoli. Iurare est jus veritatisDeoreddere.

Azo. Iusjurandü est assimatio vel megatio, religione adhibita. See the third part of the Institutes cap.
Perjury.

Ind

And albeit the Commissioners be not equal in state or degree, yet are they all of equal power and authority: for, as it both been said of old, that there might be priority, but no superiority among second commissioners.

Interrogatozies ought to be fingle and plaine, pertinent to the matter in que

gion, and in no fort captions, leading, or biredorp.

In some cases the Courts of the Common law do judge upon witnesses, but they must ever give their testimony viva voce. * As in bower if the issue be whe-

ther the hulband be alive oz no. tc.

Witnesse is derived of the Saron Herb Weten, i. Seire, Quia de quibus seinnt testari debent, & omne sacramentum debet esse certæ scientiæ. In Latin Testis a testando; & testari est testimonium perhibere: unde Regula juris, Plus valet unus oculatus testis, quam auriti decem: Testis de visu præponderat aliis.

an Dathought to be accompanied with the fear of God, and fervice of God for advancement of truth, Dominum Deum tuum timebis, & illi foli fervies, &

per nomen illius jurabis.

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Bracton faith that an alten born cannot be a witnesse: which is to be understood of an alten Instell: b for the Bishop of Rose being a Scot born, was admitted to be a witnesse, and sworn Anno 14 Eliz. in the case of the Duke of Porfolk by the opinon of the Instices assistants. Testis falsus non erit impunitus.

Nocte dieque suum gestat sub pectore testem:

1918 Conscience alwayes gnawing and vering him, d Vox simplex nec probationem facit, nec præsumptionem inducit.

Testium numerus si non adjicitur, duo sufficiunt.

Turato creditur in judicio.

Testibus deponentibus in pari numero dignioribus est credendum.

Testmoignes ne poent testefie le negative, mes lassirmative.

h Allegans contraria non est audiendus, verum vero consentiens est falsum nec vero nec falso.

Juramentum est indivisibile, & non est admittendum in parte verum, & in' parte falsum.

Allegans fuam tyrpitudinem non est audiendus,

Judex uon potest este testis in propria causa.

Jusjurandum inter alios fact' nec nocere, nec prodesse debet.

Facultas probationum non est angustanda.

De crimine in Lupanari commisso, lupanares testes esse possunt.

Qui prodit in scenam mercedis ergô, infamis est.

and thould with the videozy to the party that right hath, and that justice thould be administred: and thould say from his heart, Non sum doctus, nec instructus, nec curo de victoria, modo ministretur Justicia, See Britton 134,135.

*8 H.6.13.2 E.2 triall 46, &c. Dier 2 Eliz. 18;. 13 Eliz.306. Of witnesses. Additions to he 1 part of the Inflirutes. Sect. 1. to. 6. And to the third part of the Inftitutes cap. Perju y * 12 All.12. 23 Aff.n. 11 Aff. p 19. a Deut.6.13. 6 16 Januar.i 84 Eliz. c Prov. 19 d Bract.lib.s. fu.400.b. 2 H.7 Kelw. 96. a. b. e Bract.lib. 5.359. f Vid. 2 E. 2.triall 45. g F.N.B.106,107 b 16 E.4.10.2.

t Trin. 13 E. 1. in Com. Banco, Rich, de Raynhams cafe.

Histriones Mez-

CAT. LXV.

Curia cursus Aquæ apud Gravesend.

If this Court, and others like, which are in pathate, we intend not to treat, for that the labour herein were infinite, and ferbeth nothing for the publick, whereat our vaincipall aime bath been.

CAP. LXVI.

The Kings Swanheard.

Rot. Par. 16 R.2. part 1. m 39. * Tr.33 E.1.Effex coram Rege. Rot.124. 7 H.6. acc. The Kings Alneger. a Rot. Pat. 14 E.T.

Militi-This appeareth also by the stacutes themselves. 25 E.3.cap. 1. ftat. 4.

hat authority the Kings Swanheard hath, being of ancient time by his Difice Magister deductus Cygnorum, pou map reade Rot. Patentium Anno 1 1 H. 4. part. 1 .. m. 14. Rot. Pat. 30 E. 3. part 1. m. 20. and Lib. 7. fo. 15, &c. Le case de Swannes, but Court be hath not : Ro Fowle can be a * ftray but a Swan.

So likewise there is an ancient Officer of the Kings Alneger of the Kings gift being befoze any ftatute : As taking one erample for many. 3 3n 14 E.1. Sir Thomas Darlington was by the Bings Letters Batents Alneger of Broad Tho. Darlington Cloth, and had a fee of the ling for the erercife of his Dffice; for the fee that he had of the Subject was (as it ought to be) by Act of Parliament. 27 E. 3. St. 1. cap. 4. b Alneger of Aulne in French, and that of ulna, ulnator. See before concerning the alnaging of new Daperies, Cap. Dethe Digh Court of Parlia: ment, pag- 31.

27 E.3. star. 1. cap. 4. 3 R. 2. cap. 17 R. 2. cap. 2. & 5. 1 H. 4. cap. 13. 11 H. 4. 6. 13 H. 4. 4. 11 H. 6. 1, 31 H. 6 5. 4 E. 4. 1. 8 E. 4. 1. R. 3. Rot. Claus. 17 R. 2. m. 14. 6 The derivation of Alneger.

CAP. LXVII.

The VVardens Courts in the East, VVest, 23 H.8.cap.16. and middle Marches adjoyning to Scotland.

31 H.6. a 2.3. 8 E.4 cap. 2. 22 E.4.cap.3.

Hep proceeded according to the Law called the Harch Law, or Borders Law, but their jurisdiction was increased by Act of Parliament. The limits of their jurisdiction was within the Parches, which were confined to the Counties of Porthumberland, Cumberland, 31 H.6. capes. Westmerland, and the Towne of Pewcastle upon Tine in the Tounty of Dock.

4 H.s.cap.7. 23 H.8.cap. 15.

For the word [marches.] fee before Cap. President and Councell of

But fince Ling James was Ponarch of both Lingdomes, the batable grounds on both fides are become quiet, and so peaceable, as all the said Courts in the Cast, West, and middle Parches are vanished, and bostile laws on both fides by authority of Parliament in either of the Lingdoms repealed. See the faid Statute of 4 Jacobi. See the first part of the Inflitutes, Sect. 3.

4 Jac. cap. i.

CAP. LXVIII.

Of Callais or Callis Caletum.

Rot. Par. 90 E. 3. nu,211,212. 6 H.6.nu.41. See the flaute of 27 H.8. concerning good lawes and orders for Callis and the Marches thereof and 1 H.7.cap.3. 6 21 H.7.33. 11 H.8. Kelw. 202. b. Par. 3 R. 2.nu. 48. c Pat. 15 E.3. 2 part. Parl. 9 R. 2.nu. 4. d 42 E.3.cap. 10. Lib.7.in Calvyns cafe. e Rot. Parl. 9 R. 2 nu.4. 9 H.s.flat.2.ca.5 f 1 R.2.nu.37. g Parl. 50 E.3. r.11,209.

Wis Grong Boot Town, the famous and flourishing Part, Staple, and vent of English commodities was holden and kept by the space of 211 pears by ten feberall Bings, viz. E.3. R.2, H.4. H.5. H.6. E.4. E.5. R.3. H.7. H.8. E.6. and holden and loft by Ming Philip and Mary the first Ducen regnant of this Realm, the Lord Wentworth then Deputy there.

It was governed by Englishmen and by Englishlaws, some particular cufomes ercepted. b And of a judgement giben there a Wirit of Erroz Did le re. toanable into the Bings Bench. . Befoze the Staple at Callais, it was kept at Bruges in Flanders.

d The children born there were inheritable in England and fo declared by an thority of Parliament.

and there the King had his Pint in fuch manner as in the Tower of Lon. don. Certaine it is that riches followed the Staple wherefoever it was kept. f And it could not be appointed in any place but by Act of Parliament.

The Staple being at Callais, upon all rodes forth of the Town by the Captain, the Mayor of the Staple furnifhed him forth of Merchants and their fervants to the number of 100 Bill-men, and 200 Archers without any wages. And pet it appeareth in the Barliament Roll of 2 R.2. nu, 15. that Callais toft

the King pearly twenty thousand pounds.

See the Parliament Roll of 50 E. 3.nu.211,212. for the Dapors Courts, te. and Liberties, and Franchifes, ec. there. Hany Acts of Parliament have been made concerning this Town, and the Staple therein, which need not here to be recited : only we thought it not good totally to pretermit it, because the kings right remains to it, and it may bereafter be reftozed (which is fo much defired) to the right owner.

CAP. LXIX.

Of the Isle of Man, Infula Eubonia, modo Manna, and of the Law and Jurisdiction of the same.

Dis Ile bath been an ancient Mingdome, as it appeareth in Li.7. in Calvins case, which need not here to be recited. And pet we find it not granted of conveyed by the name of a mingdome, fed per nomen Infulz ,&c. com patronatu Episcopatus. De hath the Patronage of the Bithopick of Sodor, which is a vilible mark of a lating dome; albeit of ancient time the Archbiffon of Canterbury was Patron of the Bilhopatch of * Rochefter, and the Carl of Blour' of the Bilhopitck of Landaf. Vide Lib. M.S. in Recept. Scaccarii fo. 166, & Lib. Parliam. in Turri London Temps E. 1. fo. 19.21.

William le Scrope emit de domino Willielmo de Monte acuto Infulam Euboniz, (i, Manna:) Est nempe jus iphus Infulz ut quisquis illius sit dominus Rex vo-

cetur, cui etiam faselt Corona aurea coronari.

The Lord Scrope forfeited the same to H. 4. for Bigh freason. Bing H. 4. granted the same to Henry Carl of Bosthumberland in these words. Rex, &c. De gratia nostra speciali dedimus & concessimus Henrico Comiti Northumbria Infulam, Castrum, Pelam, & Dominium de Man, ac omnia infulas & Dominia eidem Infulz perrinen' que fuer Willielmi le Serope Chivalier defunctionem in vita sua Conquestati fuimus, & ipsum sie Conquestatum decrevimus, & quz ratione Conquestus illius tanquam Conquestata cepimus in manum nostram, Que quidem Conquestum & Decretum in præsenti Parhamento nostro de assensu Dominorum Temporalium in eodem Parliamento existentium quoad personam præfati Willielmi, ac omnia, terras, tenementa, bona, & catalla sua tam infra regnum nostrum quam extra ad supplicationem Communitatis regni nostri affirmara existunt,&c. Habenda & tenenda eidem Comiti & haredibus suis,&c.per fervic' portandi diebus Coronationis nostra & haredum nostrorum ad finistrum humerum nostrum & finistros humeros haredum nostrorum perseipsum aut sufficientem & honorificum deputatum fuum illum gladium nudum quo cincti eramis quando in parte de Holdernes applicumusi vocatum Lancafter Sword, duunte processione & toto tempore solemnizationis Coronationis supradicta.

In this little Kingdome there are 2 Cacles, 17 Parithes, 4 Parket towns, and many Allages, and in that Ide there is a Bithoppisk, as bereafter thall

Anno c H.4. the faid Henry Carl of Bothumberland toas attainted of frealon, and by Act of Parliament 1 Martii, 7 H. 4. it is enaced that the Bing bould have the forfeiture of all his lands and tenements. And afterwards in Rot. Pat. 7 H. 4. 7 H.4. the Bing granted the Ifie of Pan unacum Patronam Episcopatus to bir John Stanlye for life : and after in the fame year he granted the fame 3fe una cum Patronatu Episcopatus, to the fait Sir John Stanly and to his beirs; Tenend' de Rege haredibus & luccefforibus fuis per homagium ligeum: Reddendo nobis duos Falcones semel tantum, viz; immediate post homagium hujusmodi fact': Et reddendo haredibus nostris regibus Anglia duos Falcones diebus Coronacionis corundem haredom nostrorum pro amnibus atiis serviciis, consnetudinibus, & demandis, adeo libere, plene, & integre, ficut Willielmus Scrope Chivalier vel aliquis alius,&c.

This Sir John Stanley had iffue Sir John Stanley Anight, who had iffue Dir Henry Stapley Lord Chamberlain to Ling H. 6, who created him Lord Stanley, who had titue George, tobe had titue Thomas, whom King H.7. created Lib.7.fo.21. in Calvins cafe.

*Rot.Cart. 16 Johan, m.6.

Anno Dom.1393. Walf. An. 17 R.2.

Corona aurea. Of the quality of him, See Walf. Ubifupra. Rot.Pat. 1 H.4. Rot. 2. Bundello z. parte f. m. 36 A Pele or Pile, a fortrefi: in a fmall Ifle belonging to the Ifle of Man. Nota, the title of the King by Conquest is affirmed byParliament.

parte 2,m. 18. Cum patronatu Episcopaur.

Vide 33 H.8.c.6. a proviso for the Subjects of the Ifle of Man. 14 El.cap.5. a In Turri Lond' 3 Junii. 6 H.4. fuch a Commitfion under the Great Seal was granted to Sir John Stanley, & William Stanley, &c. to feife,&c. in this very cafe. b In tur' Rot. Pat. 18 E.1.& Anno 5 E.z.

Ror.Par. 2 Apr.

* A Dema a Saxon word for a Judge. Giraldus: funt duo f-dices in Infula Mannia (olim Ewania nuncupata) qui de livibus ibidemerumergentibus cogofcunt.

Carl of Derby to him and the heirs males of his body, who had iffue Thomas, who had titue Edward, who had titus Henry, who had titue Ferdinando and William. Ferdinando had titue Anne, Frances, and Elizabeth, and died without titue male: And between these daughters being heirs generall, and William Carl of Derby being beir male, question was moved concerning the title of the Ide of Man: which by Dueen Elizabeth was referred to the Lord Reeper Egerton, and to Divers Loads of the Councell, and to Popham Chief Bullice of England, Anderion Thief Inflice of the Common Pleas, Peryam Chief Baron, Wilho Trin. 40 Eliz, upon hearing of the Councell of both fibes, and mature deliberation, refolded thefe Five points. 1. That the Ide of Man was an ancient bingdome of it felf, and no part of the Bingdome of England. 2. They affirmed a case reported by Keilw. Anno 14 H.8, to be law, viz. Mich. 14 H.8. an office ipas found that Thomas Carl of Derby at the time of his death was feifed of the Ide of Man in fee; whereupon the Countede his wife, by her Countell, moved to have her Dower in the Chancery: but it was resolved by Brudnell, Brook, and Firzh. Justices, and all the Kings Councell that the office was meer. lp both, because the Ide of man was no part of the Realm of England, not was governed by the law of this Land, but was like to Tourny in Posmandy, or Bascoign in France, when they were in the King of Englands hands, which ivere meerly out of the power of the Chancery, which was the place to endow the widow of the King, cc. 2. It was refolbed by them that the tratute of W.2. De donis conditionalibus, no; of 27 H.8. of ales, no; the statutes of 22 02 34 H.8 of Wils, not any other generall Act of Parliament did extend to the Afte of Man for the cause aforesato, but by speciall name an Act of Parliament may extend to it. 3. It was refolbed that feeing no office could be found to entitle the king to the forfeiture of treason, that the king might grant by Commillion under the Great Seal to feife the fame into the Bings hands, ec. which being done and returned of Record is sufficient to bring it into the Lines feilin and pollellion, and into charge, tc. 4. That the king might grant the fame under the Great Seal , because he cannot grant it in any other manner, And herewith agreeth divers grants under the Great Seal of this Ille, bviz, 4 Junii, 18 E. 1. Rex E. 1. concessir Waltero de Huntercombe,&c. Rex E. 2. concessit Petro de Gaveston,&c. 1 Maii, 5 E.z. Gilberto Magaskill, and in the fame pear granted Henrico de Bello monte Infulam pradictam com omni Dominio & Justicia regali pro termino vita, &c. 5. It was resolved that a scesimple in this 3de pasting by the Letters Patents to Sir John Stanley and his beirs, is descendible to his beirs according to the course of the Common law , for the grant it felf by Letters Patents is warranted by the Tommon law in this case: and therefore if there be no other impediment, the Ide in this case chall descend to the heirs generall, and not to the heir male; as the grand Seigniories and Connots in Wales were impleadable at the Common law, but the lands holden of them by the Customes of Wales, ac. Which resolutions we have thought good to report, because they are the best directions that we have found, both in thefe, and for the like cafes.

By these Detters Patents it appeareth, that Simon Montacuse had intruded into and occupied the said Ise in nostriexharedationem, so, which he was attached to answer the same in the kings Benchat the suit of the king, but what proceeded thereupon we pet find not.

But now let us come to their Laws, and Iurisdiction of this Ale, the like twhereof we find not in any place. Their Iudges they call * Deemsters, which they choose out of themselves. All controverses they determine without proces, pleading, writing, or any charge or expence at all. Itany case be ambiguous and of greater weight, it is referred to 12, which they call Claves Insulæ, the keyes of the Island. They have Toroners (quos Annuos vocant) who supply the office of a Sherif.

But albeitithis be so, yet when this Ide was in the Kings hands, if any in-Judice or injuries were done to any of his subjects there, the King might grant

a

a Commission for redresse thereof: the like whereof we finde, Rot. Pat. Anno 20 E.1. in these woods; Rex dilectis & fidelibus suis Nicholao de Segrave seniori, Oiberto de Spaldington, & Johanni de Suthewell, Salutem. Sciatis quod affignavimus vos Justiciarios nostros ad querelas omnium & fingulorum de Infula de Man se conqueri volentium de quibuscunque transgressionibus, & injuriis eis per quoscunque tam balivos & ministros nostros quam alios in pradicta Infula illatis audiend' & terminand', & ad plenam & celerem Justitiam Notassecundum partibus inde faciend' secundum legem & consueradinem partium illarum. Et legem & consueideo vobis mandamus quod ad cercos dies & loca ques,&c. in Infula pradicta tudirem Infula querelas illas,&c. audiatis & terminetis in forma prædicta, facturi, &c., Salvis, &c. Mandavimus enim Custodi nostro Insula prædicta; quod ad certos, &c. in Insula prædicta venire fac' coram vobis tot & tales, &c. Incujus, &c. Teste Rege apud Berewick, 15 die Julii.

So as albeit the kings writ runneth not into the Alle of Pan, pet the kings Commission extendeth thither for redress of injustice and wrong : but the Commissioners must proceed according to law and justice of the Alle. They have peculiar Laws of Cutomes; for erample: If a man Ceal a Bosle, or an Dre, it is no Felony, for the offender cannot bide them, but if he feal a Capon, on a Digge he thall be hanged, tc. Apon the fale of a Boyle of any contract for any other thing, they make the dipulation perfed, per traditionem flipula. Nota: the true derivation of flipulation. And as they have peculiar Laws, so have

they a proper Language.

This Ille bath a Bithop instituted by Gregory the Fourth Bithop of Rome, Epus Soborensis. and he is under the Archbithop of Posk, but bath neither place nos voice in the parliament of England. In hac Infula Judex Ecclefiafticus citat, definit,& infra Octo dies parent, aut carceri intruduntur.

The Inhabitants of this Ide are religious, industrious, and true people with-

out begging of fealing.

In the margent, thus, De querclis hominum Insulæ de Man audiend' Co terminund'.

de Man.

* They have no Woods. 12 H.H.3.fo.5.a.

CAP. LXX.

Of the Isles of Jersey alias Gearsey, olim Casarea, and Garnsey, olim Saruia, and of the law, and Jurisdiction of the same.

Jersey hath 12. Parithes. Garnsey 10. Bit these Mes did of ancient time belong to the Duchy of Pozmandy: but when King H. 1. had overtheown his elder beother Robert Duke of Pozmandy, he did unite to the Kingdome of England perpetually the Duchy of Pozmandy together with these Mes: and albeit King John lost the posesion of Rozmandy, and King H. 3. took money so: it, yet the Inhabitants of these Mes with great constancy remained, and so to this day do remain true and faithfull to the Crown of England; And the possessions of these Mands being parcell of the Duchy of Rozmandy, are a good seisin so; the King of England of the whole Duchy.

concerning the Indicature and Customes of these Isles whereat we principally aim, it appeareth by the Isings Records in the Cower, Quod Rex Johannes constituit 12 Coronatores juratos ad Placita & Jura ad Coronam spectantia custodienda, & concessis pro securitate Insularum, quod Balivus de catero per visum Coronatorum poterat placitare sine brevi de nova disseisna fact infra annum, de morte antecessorum infra annum, de dote similiter infra annum, And so the most part they proceed according to the Customes of Rozmandy.

Drugo Barentyne dicit quod 40. An'est tempus extra memoriam secundum

confuetudinem partium illarum.

King E.3, alligned Hen. de Guldeford and others, Iustices Errants in the Ises of Barnsey and C. by his Commission to inquire if he had right in the Mannoz of C. c. and there it appeareth that they demanded advisement of the men of the Ises learned in their customes, who informed them of the customes of the Ises, which the Iustices followed, and there it appeareth that if the information was against the laws of the Ises, they may be holpen by the laws of the same. See the Book.

Quod in Custumis & aliis rebustanquam indigenz & non alienigenz trassetur, &c. Quod juratores in Insula, &c., non protrahunt judicia sua ultra unius an-

ni spacium.

An Action of trespasse was brought by A. In the Lings Bench so, a trespasse bone by B. In the Isle of Iersey: whereupon in the Record this Entry was made. Et quia negotium prædictum in Curia hic terminari non potest, eo quod Juratores Insulæ prædi coram Justiciar hic venire non possunt, nec de jure debent, nec aliqua negotia de Insulæ prædicta emergentia non debent terminari nissecundum consuctudinem Insulæ prædictæ, Ideo totum recordum negotii mittatur in Cancellariam domini regis, ut inde siat b commissio domini regis, cui vel quibus domino regi placuerit ad negotium prædictum in Insulæ prædicta audiend' & terminand' secundum consuctudinem Insulæ prædictæ.

By this it appeareth, that albeit the Kings wit runneth not into these Ides, yet his Commission under the Great Seal doth, but the Commissioners must

judge according to the Laws and Custome of these Iles.

De Attornato generali in Insulis de Gernsey, Jersey, de Serk & Aureney sac' virtute brevis domini regis. Rex omnibus Balivis & sidelibus suis in Insulis de Gernsey, Jersey, Serk & Aureney ad quos, &c. Sciatis, &c. in quibuscunque cariis nostris Insularum earundem, &c. post adventum ipsius A, in Insul' pradict' si

Paich.17 E.2.
Coram rege Rot.
67 Jeriey.
2 E.3.fo.5.b.
The Abbot of
the Mount of
S.Mich.cafe.

Rot. Clauf. 9 E. 3. & 25 E.3. Mich.41 E.3. Coram rege Rot. 109. Jersey in placito transgr. aSecundum conf. Infulæ præd. bміс.6H.8.172 b. Kelw. to the Baylif and Jurates of Jersey.Lib.7. fo. 20, 21.in Calvins cafe. Regift.fo.22. dThefe little Iffes of Scik and Aureney doe lye between and neer the other, & were parcell also of the Duchy of Normandy.

contingat

contingat ipfum A. interim veniread partes illas. Tefte, &c. They are not bound Vid. 33 H.S.c.6. by our Ads of Parliament, unlette they be fpecially named.

The King bath granted to the men of the Iles of Berneley, Serk and Aureny, that they during the space of 8 years thall be free of all manner of Tols, Cractions and Cultomes within the Realm as his Liege men and Denizens.

Infulani petunt, quia funt in mari constituti, quod non ulterius extra Infulas przdictas profequerentur ad corum periculum, & non facile possunt sequi Curias Regis in Anglia.

For the Ides of Jerley and Barnley, fee Mich. 5 E. 3. Cora Rege Rot. 46,

Pasch. 17 E.2, Coram Rege Ror, 67.

Within Barnsey there are ten Parithes, one Barket Town being the Port or Baben called S. Peters Port by the Caffle of Cornet. Berfey bath S. Albones and Billary two little Idands adjacent, it bath twelve Barifles, and four Caffles.

CAP. LXXI.

De Insula Vectis or Vecta, of the Isle of VVight.

F this we that not need to fav any thing, because it is and ever bath been part of Hamshire, and ever governed by the Laws of England, as the other Shires have been : but feeing we have named it, we will relate some things which we have observed.

Firft, there hath been an ancient Baron, de Infula, of the 3fe, og Lifle, and of latter times there was a Aiscount of the same, which is to be understood of the Ide of Wight: for in the Parliament Rols of E. 2. I find him called de

Iniula Vecta.

Secondly, Henry de Beauchamp Carl of Warwick for the fingular favour which king Henry the Sirt bare to him, crowned him laing of Wight: but the could never find any Letters Patents of this creation, because (as some doc hold) the Bing could not by law create him a Bing within his own Bing. bome, because there cannot be two Kings of the same place in one Kingdome: And after the same Bing named him Primus Comes totius Anglia. But of Camder. this it is truly faid : Cum illo novus hic & infolitus titulus omnino evanuit.

See the Statute of 4 H. 7. cap. 16. against taking of Farms within this Ine, and the power of Judicature given thereby to the Captain of this Ine,

or his Lieutenant in a certain cafe.

Rot. Par. 14 R.2.

CAP. LXXII.

Of the Island called Lindesfarne or Leidisfarne, scituate by the River Lied having on the South Eastward the Island of Farn, and is called the Holy Island.

I T hath one Castle, one Church, and one Parish, and a safe Haven des sended by a Blockshouse.

It is called the holy Mand, for that it being a folitary place holy men in times past retired themselves thither so, their better, and more devout service of God. It was of ancient time a Bishops seat, which was after translated to Duresme, and is governed by the law of England.

Farne Ifle.

For that this Ide of Farne bath neither Church nor Town, but only a Calle, I palle it (and other like Ides) over.

CAP. LXXIII.

Of the Forests, and the Jurisdiction of the Courts of the Forest.

D; the wood Foresta, see Domesday in Glove' & alibi.

For the derivation and description thereof, and some other things concerning the same; fee the First part of the Institutes.

In Latin it is called Saltus, or Sylva, And fo in Domefday, Sylva eft in defens', scilicet, in Foresta Regis.

A Forest both confict of 8. things, viz. of Soil, Covert, Laws, Courts, Jud. ges, Officers, Bame, and certain Bounds.

Foresta ett nomen collectivum, and by the grant thereof the foil, game, and

a free Chafe doth paffe.

And feeing we are to treat of matters of game, and hunting ; Let us (to the end the map proceed the more cheerfully) recreate our felbes with the excellent defcription of Didoes Doe of the Forest wounded with a deadly arrow Micken in her, and not impertinent to our purpole.

Uritur infælix Dido, totaque vagatur Urbe furens qualis conjecta Cerva fagitta, Quam procul incautam nemora inter Cressia fixie Pastor agens telis, liquitque volatile ferrum Inscius: illa fuga sylvas saltusque peragrat Dictxos, * haret lateri lethalis arundo.

And in another place using again the wood [fylva] & describing a forest latth;

Ibat in antiquam fylvam stabula alta ferarum.

Bing John the 15 of June in the 18. pear of his reign at Kummigimead, alias Kyme meade between Stanes and Mindloz, granted the like Charter as Car-

And noin let us fet down the Courts of the Forest. Within every Forest there are these Courts.

1. The Court of the Attachments of the Woodmote Court, this is to be kept before the Merderors every forty days throughout the year, and thereupon is called the forty day Court. At this Court the Foresters bring in the Attach: ments de Viridi & Venatione, and the presentment thereof, and the Werde ross do receive the same, and inroll them, but this Court can only inquire, and not convid: but it is to be observed, that no man ought to be attached by his bo-

op for Wert or Wentson, unlesse be be taken with the manner within the Forest, otherwise the Attachment must be by his goods.

2. The Tourt of Regard of Survey of Dogs is holden every third year for

erpeditation or lawing of Dogs by that Court.

3. The Court of " Swanimote is to be holden befoze the Merderozs as Judges by the Steward of the Swanimote thrice in the year, and the Forefters ought to present their Attachments at the next Swanimote Court, and the Fresholders within the Forest are to appear at the Swanimote to make Enquelts and Juries, a And this Court may inquire de superoneratione Forestariorum & aligrum ministrorum Foresta, & de corum oppressionibus populo noftro illaris. And this Court may not only inquire, but convict alle, but not give derived of Smein, judgment.

Domesday in C6' Glouc' & alibi. 2 Mar.Dier 160 I.part of the Inft. Sed.378.f 233.2. Ockam cap. Quod Regis Forefta. Bracton fo.231. & 316. Brimon fo.34. Fleta 1.2.c.3 4,3 % 1. pt of the Inft. Sect. I.fo c.b. In the Saxons time Foreffs were calledwalds, unde Waldigrave, i. prapofitus Forelta. Virgill. Sylva, as in Domesday Saltus à saltando, quia ibi feræ saltant.
Like to an evill conscience in the falle and furious Officer of the Forest if any

Cart.de Foresta cap. 16. The Court of Attachments.

fuch be.

1 E.3 cap.8. 7 R.z.cap.4.

Cart.de Foreft, Cap.6. The Court of the Lawing of Dogs. Cart de Forest. cap.8.Of Swanimote. 1 E.3.ca.8. 50 E 3. Affis' 442. Swanimore is that is, Saxonice, Minister,& mote,

10:

or Gemote, which is Curia, i. Curia Ministrorum Foresta, so called because it is but a preparative for the Justice scar. a Ordinai Foreste. 34 E.1. 34 E.1.cap.4.

45 E.3.fo.7.

"We will here. afrer thew from whence thefe feverall ra nes be derived, and the day of their feverall places.

See Domesday Warw. Si vero p.r mare contra hoftes iba: rex, vel quatuor Batinei. us, vel quatuor libras dena jorů ei mitte bint. a Ordinatio Foteftr. 34 E.I. b Regift. 8.b. F.N.B.67.C. eSee the 2.part of the Inft. Magna Cirta cap 29.

* Rot.Par.Anno E.3.nu. Int' petitiones, d See the z.pt of the Inft. W.r. c.p.15. Bradon lib.3. fo.154. Fler.lib s.c. 2. e F.N.B.67.1. Register. 1 E.3 . a. -8.

Regift. 30 b. 43 E.3.30 a.& b.

Confuetad' & Affifa de Foiefts. Vet. Mag. Cart. parce a.tu.29.

* Nota, the entry is Prafentatum, & convictum per Viridar'. f 50 E.3. Aff 442. Ordinat' Foreft. 34 E. I.

For the Burisdiction of this Court 3 find a notable cafe in 45 E.z. in a wait of trefpalle of falle imprisonment brought against I.de W. The Defendant faib that he is Fozetter in fee of the Fozett, and that at a certain Swantmote it was prefented by the " Foretters, Merderois, Regarders, and Agifters that the Plaintif had chafed and taken Deer within the Fozelt, whereupon the De. fendant being forefter in fee came to the Plaintif, and praged him to finde pledges to answer the same before the Buffice in Gire in this Country (that is, at the Justice feat) and that to doe the Plaintif refused, by force whereof he retained him, untill be had performed the statute in that case provided, and justified the impafonment. The Plaintifreplied de fon tort demeine fans tiel caufe. and the iffue was received by the Court. And it was faid that before the Buffice in Eire he fould have no averment against the presentment of the foresters

Dut of this case we doe observe 6. conclusions. 1. That the law of the Ro. reft is allowed, and bounded by the Common laws of this Realm, and therefore it is necessary, that the Judges should know, and be learned in the same. 2. That thoughthe Herderois be Judges of the Swanimote, and the Steward but a Minister pet the presentment in that Court is as well by them as Merberors as by Forefters, or keepers, Regarders, and Agitters, by the law of the foreft. 3. That a Fozefter of heeper may arreft any man that kils of chafeth any Deer within the Forest when he is taken with the manner within the Forest, or if the offender be indiced. But then it is demanded, what if a man be fo implifoned, a after offer fufficient pledges, and they are not taken, what remedy for the party, feeling there are very feldome Juftice feats for Foretts holden. The antiver is, that in the Term time he may have ex merito Justitia a Habeas Corpus out of the Kings Bench, or if he have priviledge, out of the Court of Common pleas, or of the Erchequer, og out of the Chancery without any priviledge either in the Term time, or out of the Term in time of Macation, and upon the return of the writ, he may be bailed to appear at the next Gir to be holden for the Forest, ac. And may also be bailed by force of a * writ De homine replegiando directed Custod' Forefix, if he be arrested by the Officers of the Forest for hunting, sc. where of he fands indided or prefented taken with the manner he finding 12. pled. ges: but if he be adjudged by the Justices in Dire, and impalloned he cannot be bailed by that wit De homine replegiand' directed Custodi Foresta, &c. and e if he be unjuftly proceeded withall there he hath remedy by law, as hereafter, when we treat of the Justice Seat, shall be declared. And it is to be observed, that there is a divertity between the wait De homine replegiando directed to the Sherif, for he is restrained by the statute of VV. 1. cap. 15. to repleby any man imprisoned for the Forest, being taken with the manner or indiaco, but this statute ertends not to the wait De homine replegiand' directed Custodi Fo-

The Fourth conclusion is, that the offender may be refained by him untill be hath found pledges to appear befoge the Buffice in Cire , because (as hath been faid) the Court of the Swanimote hath no power of Judicature, but if he offer Infficient fureties, he ought not to be imprisoned.

5. That this Justice in Circ at his Sessions may by the law of the Fozest proceed upon the presentments or verdicts in the Court of the Swanimote, though they be taken in another Court, as the Buffices in Eire might have bone in like cases as before in the Chapter of Juffices in Cire appeareth.

6. Laftly, Note the iffue joyned upon the plea of the Forester, viz. de injuria fua propria abique rali causa, and allowed by the Court, and the consequent thereupon. And thus much for the cafe the Reporter faith, that it was faid that the party (hould * not traverse the presentment of the Foresters, Aerderors, Regarders, and Agisters: f and herewith agreeth 50 E.3. and note the present. ment was in that case by 36. And herein this diversity is to be observed, that if at the Swanimote the presentment of the Foresters be found true by the Jury concerning Meri or Menison, the offender Candeth thereof convict in law, I reference by 36. and cannot traverse the same: but an indiament of presentment before the

chief Juftice of the Foreft at a Court of the Juftice Seat by a Jury, and not 21 E.3.48. found in the Swanimote, may be traverfed. 8 E.g. Itinere Pickering 147. a.

because it is not prefented but by one Burp.

4. This cafe also giveth just occasion to fpeak of the Court of the Justice The Justice Beat holden befoge the Chief Juftice of the Fogeft, aptly called in the faid Book Seat. Justice in Eire, for fo be is, and bath authority and jurisdiction to bear and betermine concerning Wert and Wenison, ac. by force of Letters Batents under the Great Seal, wherof there be two, one for the Forest on this fide of Trent, the o. ther beyond. 15y which Letters Patents the lating doth grant unto bim Officium Gardiani Capitalis Justiciarii ac Justiciarii soi Itinerantis omnium & fingularum Forestarum, Parcorum, Chacearum & VVarrennarum suarum cum suis per-.tin' quibuscanque *ultra Trentam existen', &c. dantes & concedentes eidem A. B. plenam authoritatem & potestatem tenore prædictarum Literarum Patenrium omnia & omnimoda Placita, querelas, & causas Forestarum, Parcorum, Chacearum & Warrennarum prædict' tam de Viridi gram', quam de Venatione, ac de aliis causis quibuscunque infra easdem Forestas, Parcos, Chaseas & VVarrennas evenien', five emergen' audiend' & determinand': Habend', occupand', gaudend'& exercend' offic' præd'cum pertin' per se vel per sufficien' b deputatum suum five deputatos suos sustic' durante vita ipsius A.B. &c.

And this Court of the Buffice Seat cannot be kept offner then every third pear, and other Justices in Cir kept their Courts every feventh year. And (as before other Justices in Gire) it must be fummoned forty days at the least before the fitting thereof: and one wait of fummons is to be directed to the oberit of the County, which wait you thall find hereafter in this Chapter.

There is another wit of Summons directed Custodi Poresta domini regis vel ejus locum tenenti in eadem, and this wait confifteth npon two parts. First, to fummon all the Difficers of the forest, and that they bring with them all Records. tc. Secondly, all perfons which claim any I therties or Franchiles within the forest, tc. and to thew how they claim therfame. And this Court or Juftice Deat hath jurisdiction to inquire, bear, and determine two things. 1, All trespaces within the Forest according to the laws of the Forests. 2. All the claims of Franchifes, Priviledges, and Liberties within the Forest, as to have warks, Warrens, divaries, to be quit of afferts, and purpreffures, to cut down his own Woods without view of the Forester, tc. Likewise claims of Leets, Bundzeds, Felons goods, Waifs Strays, Fugitives, and to kill Bares and other Beatts of chafe within the Forest, or to have a Wood infra metas Forelta & extra regardum Foreita, that is, to be out of jurisdiction of the foreit, and other Franchiles, Paiviledges, Liberties, Immunities, Freedomes, tc. within the Fozelt, whereof you shall read ercellent matter in the Eire of Dicke. ring in 8 E.3. Rot.31 . Where Guilberd of Acton claimed his Woods extra regar-

This Thief Juffice may by the ftatute of 32 H.8. make his Deputy (Det all 32 H.8.ca.35. the write of Tommons ancient and late, are Coram (the Juftice Itinerant) and

eins Deputato.)

Before any Justice Seat be holden, the * Regarders of the Forest must make their regard by force of the Bings wait, and the regard is obambulare, to goe through and view the whole forest and every Bayliwike of the same, ad videndum, inquirendum, imbreviandum & certificandum all the trespattes in the forest: his office extendeth through the whole forest, and every part thereof. to inquire of all offences concerning Wert and Menison, and of all concealments of any offences or defaults of the Forefters, and all other Officers of the Bings Forett. De is a ministeriall Officer, and is conflituted either by Letters Patents of the Bing, or by the Thief Justice at the Justice Seat, or to be thosen by wait to the Sherif. The duty of this Officer appeareth by the wait bereafter mentioned.

Before a Justice Seat there ought to be preparations for the same, to the

* The like office Citra Trentam mutatis mutandis. Note, anciently this great Officer was created by Writ, as other Juflices in Eite were, but now by the statute of 27 H 8.ca. 34. he is to be created by Let. Par. See before Cap. Juftices in Eire. a This is to be understood of Parks, Chases & Warrens within the Forests, as hereafter fhall appear. b That is by the ftatute of 32 H.S. Cart. de Foreft. cap. 16. 21 H.7.30.

* A Regarder is derived of the Freuch word Rcgardeire, that is, to view or fee,because he cannot present any thing but upon his own fight and view. To speak once for all, the names of all the Officers from the highest to the loweft, put them in mind of

end, that good fervice may be bone there, & quod Itinera non fint umbrati-

Breve de Regardo cum artic'.

a Forest' deSherwood, i. Limpida
Sylva.

b Cart.de Forest.
cap.7.

112 Capit.paten,
inferius.
In this writ 9.
things are to be
observed.

Rex Vic' Not, Salutem. Præcipimus tibi quod Venire fac' certis die & loco quos ad hoe duxerimus providend' omnes Forestarios & Regardatores de a Sherwood ad regard' faciend' in Forest' prædict' ante advent Justiciariorum nostrorum de Forest', a loco regardatorum nostrorum qui mortui sunt & insirmi alios eligi sac'. ita quod b 12 sint in quolibet Regard', & nomina illorum imbrevientur. Et Forestar' debent jurare quod 12 milites ducent per totam balivam suam, ad videndum omnes transgressones quæ exprimuntur in scriptis capimlorum quæ tibi mittimus, & hoe non omittent pro aliqua re: Debent etiam milites jurare quod facient regard', sicut debet sieri & solet. Et quod ibunt sicut Forestar' eos ducent ad prædicta videnda. Et si Forestar' noluerint eos ducere, vel aliquid forissact' concelare voluerint, ipsi milites non omittent pro illis quin sortissact' illud videant & imbreviari faciant: et hoe pro nulla re dimittant. Et quod Regard' stat eirca Fest' beati Petri ad Vincula prox' sutur', Teste, & c.

The 12. Chapters abovementioned are these which the Regarders duty is to prepare.

The 12. Chapters above (1 Videnda funt omnia Affarta, &c. Affarts,

2 Videndæ funt omnes Purpreftur' in bofcis, &c. Purpreftures in woods,

3 Videndæ sunt omnes Purprestur'in terris arabil',&c. in Arable.
4 Vidend' sunt omnia Vasta boscorum,&c. Wast of Woods.

5 Vidend' funt omnes Bosci domini regis, &c. The Bings Moods.
6 Vidend' funt omnes Haiz domini regis, &c. The Debges of the Bing.

7 Item omnes purprestur' & omnia assarta, & omnia vasta, &c. Benerall woods.

8 Vidend' funt omnes Aerex Austurcorum, Espervorum, Falconum,&c, Aperies of Baulks.

9 Vidend' funt omnes Forga & Mineria, &c. All Forges and spines,

10 Vidend' funt Portus maris,&c. The Davens of the Sea.

(11 Vidend'eft Mel,fiquid,&c. Donp.

12 Item milites debent attente inquirere in itinere suo quis habuerit areus & sagitt' yel baliseas leporarias, burchetas, vel aliquid ingenium ad malesaciend' domino regi de seris suis. Balista, 02 Arcubalista, signifieth a Crosbow.

Leporaria, a harepipe. Burchera of the French word Berche, a kinde of

Bunne.

Imprimis ordinavimus pro nobis & hæredibus nostris quod de transgres' in Porestis nostris de Viridi & de Venatione de cætero sact', Forestar' infra quorum balivas hujusmodi transgres' fieri contigerint, præsentant easdem ad prox' Swanimotum coram Forestar', Viridar', Regardator', Agistator', & aliis easundem Forestarum ministris. Et super præsentationibus hujusmodi ibidem coram Forestar', Viridar' & omnibus aliis ministris supradictis per sacram' tam militum quam aliorum proborum & legalium hominum de partibus vicinioribus, ubi transgressiones sic præsentatæ sact' suer' non suspectorum, per quos rei veritas plenius inquiratur. Et sic inquisita veritate præsentationes illæ per communem concordiam & assensum ministrorum prædictorum roborentur & sigillis suis sigillentur. Et si alio modo suit indictament pro null' penitus habeatur.

This Didinance being made by the King only without Authority of Parliament, albeit it was in affirmance of the law, did not binde, and therefore was not erecuted: and that it was but an Didinance, or Declaration made by King E.1. it apppeareth expectly by the statute of 1 E.3. and by that Act of 1 E.3. the said Declaration is rehearsed as a law, the observation whereof is

also an excellent preparation for a Justice Seat.

Viridarius is a Judiciall Officer of the forest, and chosen in full County by force of the Kings witt. His office is to observe and keep the Asises of Laws of the forest, and to view, receive, and inroll the Attachments and presentments of all manner of trespases of the forest of Aert and Aenison, to do equal right and justice as well to poor as to rich. All this and much more you may read in the

and in this respect may be resembled to a Coroner, super visum al.

Nota,all thefe II. are to bee

upon his view, Super vifum,

-

Ordinatio Forefle.

34 E. I.

1 E. 3, ca. 8 sta. 1.
F. N. B. 164.
F. N. B.

the Dath which he taketh befoge the Sheriffe. There be moft commonly four

Merberois in every of the Bings foretts.

Agiftator, fo called, because be taketh beatts to agiftment, that is, to depatture Agiftatores. within the forest, or to feed upon the patonage, and commeth of the French Contt & Aff. fomorb, Gyler, to lye, because the beatts that feed there are there lebant & conchant, reft. ubi fup. lying and rifing. And his office confifteth in agillando, recipiendo, imbreviando, & certificando.

And this Officer is conftituted by the Kings Letters Patents; And of thele

in fuch forefts where there is any pawnage, there be four in number.

Gruarii, (of tohom you thall reade in Forest Records) is derived from the french wood Gruyer, which fignifieth generally the principall Officers of the forest. Et iph Gruarii vocantur ad similitudinem eorum qui Aucupio Regis in . See the Cuft de

grues olim præerant.

Forettarius is taken for a Woodward not only of the King within his foreft, but ex vi termini of any subject of his Woods wheresoever they live: which appeareth by a Warit in Bracton in these woods, Rex Vie' Salut, Scias quod propter destructionem quæ facta est in bosco & terra quam A.de N. tenet in dotem in tali villa de B. de N. Provisum est in Curia nostra coram Justiciariis postris,quod idem apponat Forestarium suum ad prædictum boscum custodiend'sita quod prædict' A. non habeat in eodem bosco nisi rationabile estoverium suum ad ardendum & claudendum tantum super eandem terram quam ipse tenet in eodem, &c. But in legall understanding be is taken for a floorn Dfficer ministeriall of the kings Forest, t his duty appeareth by his oath, which consisteth on Five parts. 1. That he thall be loyall and true to the Patter of the Fozett. 2. That he thall truly walk and keep the Dffice of the Forefterthip, and true watch make both early and late both of Mert and Menison. 3. Truly attache, and true presentment make of all manner of trespaces bone within this forest to his knowledge, and specially within the keeping of his Bailiwick. 4. The Bings counsell, his fellows, and his own, he mail truly keep. 5. Bo concealment make for no favour, meed or dread, but well and truly to behave himfelf therein.

a Officers of the Forest wall not be Iworn on enquests out of the Forest. b Meffarius is a Dolver og Barbefter, berired à metendo. Fleta lib. 2. cap. 75.

meffor. 30 aff.

Thestylis & rapido sessis messoribus aftu Allia Serpyllumque herbas contundit olentes.

[Surcharge of the Forest] Superoneratio foresta, is when a Tommoner in the Fozelt putteth on moze Bealts then he ought, and fo furchargeth the Forest. It is taken from the Wirit De secunda superoneratione pastura in the fame fent when the Commoner furchargeth. To here it is faid (repore coronationis Regis Henrici avi, that is, of H.2.) It is to be known that he was crowned twice, viz. the 20 of December in the first pear; he caused his sonne Henry to be crowned Ling the is of June in the 16 year of his reign; Henry his fon died the 11 of June in the 28 year of his reign; after whole death Bing Henry Fitz Empreffe ipas croipned again.

Desertum, id quod ab hominibus deseritur, & feris relinquitur.

Malura terræ, funt in eildem maluris 60 domus plus quam ante fuerunt. Mas

de tra, that is an erchange of land where there is a houle.

Fugacia lignifieth a Chafe, and is all one with Chafea. See the Charter of Carta Marildia Mawde the Emplesse, stilling her self Anglorum Domina, made to Miles of Olocester, creating him thereby Carl of Hereford, wherein towards the end follow these words. Pracipio quod hae omnia supradicta teneat de me libere & quiete in bosco & plano, in forestis & sugaciis, in pratis & pasturis, &c. Praterea autem concedo, ut in propriis ipfius prædiis quisque tam in agris, quam in sylvis Int.leges Canuti excitet agiterg; feras; meas autem ne venetur, ils præfertim in locis quos privilegio circumscripsi meo cum poena pracipio.

That H. .. made at Woodfocka Bark, which was, faith be, the first Bark Johnnes Roffus, in England. But it is out of doubt that there were Parks in the dayes of the

Norm.

Forestarius,

Bradon lib. 4. fo.316 a. & b. & 231.2.

a Ordinat, forest. 34 E. 1.cap. 5. Regift. 183. F.N.B. b Affifa eccoluer. foreft.6 E. 1.c.16. Virgil.

Regift & F.N.B. 126.2.e.&c. Surcharge. Mag. Carr.tap 5.

Domesday. Sudfex Ciceftr. & fape.

Imperatricis Miloni de Gloffeil.

cap.77. Lamb.

Deorfald Falda ferina.
Domesday.
Chent. Certh.
1b. parcu sylvatic bestiarum Devonscoire. Winchelere. Hertfordscire. Belinton.
Assist. forest.
6 E. 1. cap 1.

Ibid. 8 E.3. Itinere Picker. Guilbert of A-Cons case.

Ib. Artic, 11, Camia continet spacium o & o palmorum in longitudine. Dors. claus. An. 16 R.2 m. 30.

Bract, lib. 3.fo.32

21 E.3-48.a. In Scire fac. Vid. 25 E.3. fo. 43 Nichol. Gowers cafe. Vid. Regist. 263.b Bre demquirendo de libertatibus allocatis.

sarons, which were called Deerfald of two saron woods of Deor for Deer, and Fald for a place inclosed with pale, bedge, or wall. And in the Book of Domeson of other mention is made by expecte name de Pareis, Parcus bestiarum, Parcus sylvaricus bestiarum.

Haia taken to; Parcus of the French wood Heye to; an inclosure Rot. Inquifit,

36 E. 3. in Seacc' de foreft'.

Haia de Kingeslie in Hamshire.

Hulmus, i. Insula an Isle. Bercaria, Vid. 1 part Instit. Sect. 1, Ma-stivus mutulatus is a Pattisse expeditated or latwed, and not musled: sor no Dog by the law of the Forest ought to be musled. Mutulatus commeth of the Aerbe Demutulo, i. demembro. Bissa, i. Cerva, of the French word Bishe sor a Histor. Mutulatus of Apice, a Wilde Cat.

Tessones of the French word Tesson, sor a Dray, Brock, or Badger. Beso.

nus of Bison a French toogd for a withe Dre.

Ham, Saxonice domus, home, sometime Villa, as Mileham olim Mildham.

because the aire was milde and temperate.

I Hue and ery, Hurchum & Clamor, the one being an expolition of the other, each of them lignifying crying and howting; verba dolentis. And Hue is derived of the French word huier, and crier. But Due and Cry by the Forest law is not to be made for trespalse in Aert, but in Aentson only. This Hue and Cry cannot be pursued but only within the bounds of the Forest; and the offence must be committed within the Forest, and not within the pursues. And this Hue and Cry may be made by any of the kings Ministers of the Forest, so, any of them may arrest the malesador, and none can make Hue and Cry but he that may arrest in that case, and cannot. And so are the generall words, Si quis viderit, &c, to be understood.

Si quis videric, &c. If any Townthip of Allage follow not the Bue and

Try, they thall be amerced at the Jattice feat.

Taken with the Mayneer, a Manu is in 4 kinds, viz. Dog-draw, that is, drawing after a Deer which he bath hurt. Stable Kand, viz. at his franding with any kintle. Guine, or Bow, or close with Drephounds in his Leath ready to thoot or course. Back-bear, that is, carrying away the Deer which he killed. Bloody hand, that is, when he bath thot or coursed, and is imbrued with blood.

But what if injuffice be bone at the Juffice feat . For erample, as if a claim be made of any liberty at a Buttice feat, and is there allowed, what remedy hath the party grieved in this cafe . which I do the rather propound, because I find not this boubt refolbed in any of the readings upon this statute of Carta de Foresta, or in any that have written of the Forest laws. And I find this question refolved by a notable Book case in 21 E. 3. agreeable with the Register and other Books; where the case was this. A. & B. before the Justices of the Forest of Dickering claymed to have within the Wood of E. within the same Fozest a Woodward proper, and also to have the windefals in the same Wood, which claime was altowed by the faid Justices, where in truth the faid claime was falle, to the differiton of the Commoners there: for that the Commoners with in the faid Town of E. had the choice of the faid woodward, and all the inindefals to, their reasonable Estobers as belonging to their freehold. Therupon on thebehalf of the Commoners the Record before the Inflices of the Forest was remobed by Certiorari, (which in the forest law to called a Venire facias Record) into the Kings Bench (which Court is above all Eires) and two of the Commissio: ners, viz, Robert de Searburgh and Robert Wich fued out a Scire fac'upon the faid Record against the faid A. & B. &c. And they declared upon the faid Wirit that all the Commoners had the liberties aforefaid : Exception was taken to the Warif, that the grievance is as well improfed to others, as to those tipo which were plaintifes in the Scire fac. Whereunto it was answered, that although the grievance was to others, pet those two that would complain might maintaine this fuit. And if the others be of Record with A. and B. pet thefe two map fue, and thefe two might have joyned in Aftife. And there it is holden, that if a profit

be granted to a comminalty out of the Forest, the claime ought to be made by them all, but otherwise it is within the Fozest, where every one thall have his Action by himfelf for that which belongs to him; and in the end the Warit was adjudged to be good. But in this cale somewhat is implyed, for by the law of the forest when a claim is made of any liberty within the forest, although no fflue be topned thereupon, yet the entry to, Er quia videtur Justiciariis quod expediens & necesse ad inquirendum super pramissis rei veritatem antequam ad allocationem clamei prædicti procedatur, inquiratur inde veritas per ministros ejusdem forefta: and fometime tam per ministros forefta quam per alios liberos & legales homines, at the differetion of the Justices to; the advancement of truth : and accordingly the Foresters, Merderors, Regarders, and Agisters de enquire thereof. - Allo it a claim be made befoze the Juftices of the Fozeft, whereupon there protocth difficulty, or it a demurrer in law be thereupon joyned, the Juffi. tes may adjourn the same into the Kings Bench to be there adjudged, and then the entry to, Ideo quoad clameum prædict' pro eo quod Jufticiarii prædict' nondum advilantur de judicio inde reddendo datus est dies eidem H. coram Domino Rege (in tali retorn') ubicung; &c. de audiendo inde judicium; &c. Et dictum eidem H. quod interim sequatur bre de Venire sac' inde recordum, &c. Postea Dominus Rexmandavit præfat' Juftie' bre fuum in hæc verba. * Edw. Dei gratia Rex Anglia, &c. Dilecto & fideli suo Rico de Willowbye salurem. Cum vos & socii vestri Iusticiarii nostri ad placita foresta, &c. tenend' assignat' quoddam clameum de diversis libertatibus per dilectum & sidelem nostrum H. de Percye coram vobis & fociis vestris pradictis in eadem forest' fact' propter quasdam difficultates in eodem clameo content' coram nobis adjornaveritis, ut accepimus, Vobis mandamus quod si ita est, tunc omnia clamea prædicta nec non recorda & process, inde coram vobis habita coram nobis ubicunque fuerimus in Anglia sub figillo veltro fine dilatione mittatis juxta adjornamentum prædictum hoe bre nobis remittentes. Tefte, &c. Anno 12 E. 3.

Virtute cujus Brevis elameum prædict', nec non recordum & proceff, prædict'

mittuntur coram rege ad diem prædict una cum brevi prædicto.

Postea Dominus Rex mandavit præsato R. de W. quoddam alind bre claus, in hze verba. Edw. &c. dilecto & fideli R. de W. Salutem. Cum vos & focii veftri Insticiarii nostri ad placita forest' in forest' H.com' Lanc' de Piek' in com' Eborum tenend' affign' quadam clam' de diversis libertatibus per dilectum & sidelem nostrum H. de Percye coram vobis & sociis vestris prædict' in eadem forest' habend' fact' propter qualdam difficultat' in eildem clameis interveniend' coram nobis adjornaveritis. & quadam alia clamea sua similiter ibidem de quibusdam aliis libertatibus fa& allocaveritis, prout accepimus; Nos volentes tam super dictas libertates fic adjornat', quam super al' allocat' certis de causis certiorari, vobis mandamus quod fi ita eft, tune omnia clamea præd' nec non record' & proceff, inde coram vobis, & sociis vestris prædict habit coram nobis ubicunque fuerimus in Anglia sub figillo vestro fine dilatione mittatis, & hoc breve,ut hiis inspectis ulterius fieri faciemus, quod de jure fore viderimus faciend'. T. E. Duce Cornub. Com' Cestriz filio nostro charissimo Custod' Angl' apud Berkhamsteed Primo die Februarii anno regni nostri 13. Virtute cujus brevisclam præd'tam adjornat quam allocat' mirruntur coram Rege una cum bri prædiæ', &c.

By all which cases the former question is resolved, which case and consequents

thereuvon is worthy of ferious confideration.

Nicholas Gower was indiced for that he killed the kings Bame in the kings 25 E.3.43. Forest, when he was the Kings Steward of the same, and also had taken ransome to: Indiaments, which Indiaments were removed coram Rege, and the Steward was put to answer thereunto,

a 8 f. 3. Irinere Picker. Henry de Percyes cafe which depended in advisement for difficulty tour cars before R.de Willow by, and other Justices of the Foreft. Record. Certiorari. * A Certiorari before judgement out of the Chancery returnd into the Kings Bench directed to R. de Willowbie (being the ancient primary Iudge)only, behath the keeping of the Records.

27 E.1. corana Rege Rot. 13. Wigorn'. Note the Writ of the Justice of the Foreft retorn'into the Kings Bench. Breve Infliciarii forefte. Verfus Godfridum Epifc. Wigorn'. Ad finem faciend' pro transgreff. venationis in foresta de Windefor

Hugo le Despencer Iustic' Forest' citra Trentam mandavit quoddam Breve (uum Vic' Wigorn' retorn' coram Domino Rege in crastino Sancti Fohannis Baptifta prox' praterito, &c. in bac verba. Hugo le Despenser Iuftic' Forest citra Trentam Vic' Wigorn' Salutem. Mandamus vobis quod distring' Godfridum Episcopum Wigorn' per omnes terras & catalla sua in balliva vestra, ita quod nec ipfe, nec aliquis per eum ad ea manum apponat, donec aliud a Domino Rege seu à nobis inde habueritis in mandatis. Et quod de exitibus coram Domino Rege respondeatis, & qued habeatis corpus ejus coram Domine Rege in festo Saniti Johannis Baptista ubicunque tunc fuerit in Anglia, ad finem faciend' pro transgressione venationis per ipsum facta in foresta de Windesore ficut per legalem inquisitionem secundum Asisam foresta coram nobis apud Windefor captam plenius nobis constat. Et unde eidem Episcopo per literas nostras ex parte Domini Regis alias mandavimus, quod pro fine (no inde faciendo veniret coram nobis apud London, ita quod effet ibi in crastine Sancte Trinitatis prox' praterito, vel sufficientem Attornatum suum ibidem mitteret [uam plenam potestatem in hac parte habentem : qui ad diem illum coram nobis non venit, nec Attornatum in hac parte misit sicut ei ex parte Domini Regis mandatum fuit; Et habeatis ibi hoc Breve. Dat' apud Lugtheburghe die Iovis in Ottab' Ascensionis Domini Anno regni Regis Edwardi vicesimo sexto. Ad quem diem Vic' nihil inde fecit, sed mandavit quod praceperat ballivis libertatis ejusdem Episcopi de Osewoldestowe qui nihil inde fecerunt. Per quod praceptum fuit eidem vic' quod non omitteret propter pradictam libertatem. quin distring' pradictum Episcopum per omnes terras, &c. Et quod de exitibus &c. Et quod haberet corpus ejus coram Rege in Octabis Sancti Michaelis, ubicunque, &c. ad finem faciend', &c. cum Domino Rege pro tranfgreff. pradict', &c. Et similiter quia procedi non potuit ad finem capiend' de prad Episcopo, &c. fine record' pradicti Hugonis Iustic' &c. de transgress. prad. &c. Mandatum fuit eidem Hugoni Iustic', &c. quod recordum inde coram eo habitum regi mitteret ad prafatum Terminum cum omnibus recordu illud tangentibus. Et Vic' nullum breve retornavit coram Rege ad prafat' Terminum Sancti Michaelis: nec pradictus Hugo Iustic', &c. aliquod recordum misit, &c. propter quod, sicut prius pracept' fuit vic' quod non omitteret propter pradictam libertatem, quin distring' pradictum Episcopum per omnes terras, &c. Et quod de exitibus, &c. Et quod haberet corpus ejus coram Rege in Octabis Sancti Hilarii ubicunque, &c. ad finem faciend' in forma pradict. &c. Et Vic' retorn' breve, fed pradictus Hugo luftic' nullum recordum misit. Et super hoc venit quidam Aluredus de Northgrave pro pradicto Episcopo, & dicit quod prafatus Hugo Iustic', &c. distringit prad' Episcopum per diversa brevia sua in Com' Wigorn' & Glouc' ad finem faciend' coram ipso de eadem trangr. & nihilominus paratus est satisfacere Domino Regi pro pradicto Episcopo de pradicti transgress. secundum recordum pradicti Hugonis, & secundum quod Cur' Regis confideraverit, &c. Et quia diitus Hugo Iuftic' nullumrecordum misit per quod procedi potest ad finem capiend depradicto Episcopo, erc. Ideo quoad pradictum Episcopum cessat distr usque à die Pascha in unum mensem ubicunque, &c. Et dittum est pradicto Aluredo quod tunc sit ibi ad finem faciend pro pradicto Episcopo, vel quod habeat Warrantum de pradicto Hugone Iustic' quod finem fecit vel finem facere debeat coram pradicto Hugone Iustic', &c. de transgressione pradict', &c. Et nihilominus mandatum est prafato Hugoni Iustic', &c. quod Venire fac' recordum pradictum,ut pradictum,eft,coram Rege prafatu terminu, &c. Dbserbe

Procedinon potuit ad finemerap, fine recordo, &c. A Certional to the Juffice of the Forest for the Record.

E piscopus para-

é

e

Observe well the parts of this Record, and a ready way to bely the Ring to his fines after the @ire of the foreft is enben.

On the other live it is bemanded what it a man make a just and lawfull claim " Regist. 162. and to certain liberties at the Justice Seat, and connect obtain the fame to be allows F.N.B. 229, b.& ed by the Austices of the forest, what remedy for him that maketh fuch claim? . The hereunto the answer to, that he shall have a wait Delibertatibus allocandis, pirected to the Austices of the forest, lubich writ both appear in the Register.

a And any person that is to make any claim may the first bay of the & ire either make it in perfon or by Atturny, .N.B. 36.g. And he that appears upon a prefentment of indiament taken before the Juffices in @tro, and traberfeth the Indidment,may after appear by Atturny. Des befoje Cap. Juftices in Cire the Pick. 148.1. wit in the Regist. 19.2. W.2.cap. 10.

And the entry is A. B. po: los suo T. B. vel L. N. de omnibus placitis sen querelis motis seu movendis, & ad omnes libertates calumniand', prosequend', & defendend' durante Icinere ifto: whereby it appeareth in what generality an Attur: ny may be made.

And this agreeth with the Register, fo. 19. b. by 5. kind of Whrits which Regist. 19.b. are mosthy of observation, viz. Breve de clameo admittend in itinere per Attornatum primo die itineria. &c. De libertatibus exigendis in Itinere: De Attornat'in omnibus placitis & querelis in itipere, & ad libertates calumniandas: · Aliter in omnibus placitis & querelis in Itinere juxta forma stat' de Merton cap. 10. Glouc'cap. 8. & W.2, cap. 10. Aliter de Attornatis, &c.

And thefe Write are to be granted ex merito Jufficia, totthout any benyall as well to the Juftices in Cire of the forest, as other Juftices in Cire for the admitting of Atturnies. Vid. 2. part of the Inflitutes W.2.cap. 10.

And upon fearch made I find the like wit beginning , Omnibus Balivis & fidelibus fuis, &c. in the @treof Pickering, 19. b. for the Bitor of St. Johns of Bernfalem to make an Atturny before the Buffices of the foreff.

But what if the Justice in Cire give an erroneous judgment, sc. what remeby bath the party griebed . De may have a witt of Error out of the Chancery Labbor de Strata returnable into the Kings Eench, and there justice thall be done.

If a man make his claim by grant or prescription, and he or his Councell mistaketh his right title in fome materiall point, fo as the claim is found against him, it is good for him that his true title be found by the fame berdia specially, for then may the party by petition make a fine and pray licence to make a new claim, and thereunto be ought to be admitted.

And concerning claims it is specially to be observed, that by the forest law a grant made of a priviledge within the forest to all the Inhabitants being free: bolders within the fozest of such other Comminatties not incorporated, is good.

3f a man make a falle claim by claiming more then be ought, be thall be fined fors. Lanc. f. 64. for his false claim, but that which he ought to have thall not be seised: As the Drior of Dork claimed by Charter to have Tithe of all Menilon, cam in carne quam in corio, where he ought not to have it in corio, for which he was fined and enjoyed it in carne.

In the Cire of Dickering holden before Richard de Willowby, Robert de Hungerford and John de Hambury Buttices in Gire for the forest of Dickering, Pickering, cafe. Anno 8 E.3 a claim was made by Thomas de Pickering and Margaret bis wife, viz. Habere in dominico bosco suo de Locton Woodwardum ad custodiendum Boscum suum, & quod nullus in eo amputet aut prostrare faciat arborem aliquam fine voluntate sua, & quod ipsi in bosco suo possunt prostrare & dare pro voluntate sua arbores virides & siccas, & dare & vendere arbores suas pro voluntate fue fine vifu Foreflariorum,&c. and preferthed in the fame in the right of . In cur'scacear' the fait Margaret, where this prefcription was inquired of and allowed to be coran Edw, Sangood in law, but it was found, as to the taking of the trees without the view of ders Capital Bar. the Fozeffer, to be untrue.

The like prescription made by Sellinger to take and cut boton Timber frees tompore R Eliz. within his own Woods within the forest of Pape in the County of Pereford

\$30.3.& Int communia de Scaccar-de Anno 14 E. 1.de libertatibus allocandis & vide L. Ockha f.47,48. a 8 E.g. Itinere 68 E.z. ltinere Pick, the case of the Priorefle of Rocela. Reg. 19 b.

2 E.3.fo.29. Lib.g.fo. 18.b. Marcellas cafe. d 8 E.z.lun' Pick. fo.165.the cafe of William of Perfay and Petronilla de Kinthorp. 8 E. 3. Itin' Pick, fo.21. Itin' Lanc' fo.4 c 8 E.z. Itin' Pick.

& alits Baronibus of the report of Popham Chief without Juffice.

Dome

Conftit.& Aff. Forest' ubi sup. A man may claim to have dogs inexpeditate aud hounds within the Forest.

Regift. 257.2. F.N.B. 226.5. 2 E. 2.trhs. q.

Pasch. s Iac. Reg.

Vid.Reg 258.3. Bowland is cal led Libera Chafea de Bowland.

Temps E.r.trefpaffe 249 the cafe is to be underflood of a For ft where Foresters (there na ned) be, for every Foreft is a free Chafe, tur not & conver, o. 43 E.3.8.

Vid. Dier 6 E.6. fu.70.

mithout the view of the Forester, and upon argument and long advisement it mas adjudged, that the prescription was good not withstanding the Debinance of 14 E.I. and the fratute of 1 E.3. cap. 2. And the reason was, because that flatute was but in affirmance of the Common law of the forest, and against fuch a statute a man may preferite. And that 34 E. 1. was but an Dedinance and no Statute, fee F.N.B. 167.a. Regifter, Which jungment was agreeable to Pickes rings cafe abovefait, and is of great confequence: for the fratute of Carra de Foretta, and most of the statutes concerning topests are likewife declarativa antiqui juris; and therefore as against the Common law, so against them a man map preferthe upon a fuft and reasonable cause; but if they were introductiva novi luris, then no prefeription can be made against them, unlesse be bath another statute to preferbe the liberties.

And if a man bath a Wood in a forest, and bath no fuch prescription, the lain both appoint him a means to fell both wood and timber, fo it be no prejudice to Ad quod damnu. the game, but fufficient is left befides, and that is, by a wait of Ad quod damnum.

upon return whereof the Bing both licence him, sc.

By the Kings commandment under his Signature and Signet, all the Ind. nes were affembled about certain questions concerning his forests of Leicester in the County of Leicefter, and of Bowland in the County of Warwick, to be mos bed to them by the Atturny of the Duchy. And the first question which was mobed, was, whether the faid forests were forests in name only, or in lain: which being qualtio facti, the Judges could give no answer: but by way of direction they refolved, that if they were forests in law, it must appear of Record, for there be certain incidents inseparable to every forest, viz. Courts of Record, and Difficers of Record, Courts of Record, as Courts of Attachments, Stranimote. and Juffice Seats. Officers of Record , as Foreffers, Merderers, Regarders, Agifters, tc. who are made (as it appeareth before) by matter of Record, ac. but appellation or naming of them forests in offices, pleadings, grants, or other conbegances, are no proofs, that they be forests in law.

2. It was refolded by them, that if they be but free Chales and no foreffs in law, that then the owners of Woods within such Chases may cut down time ber 02 wood growing therein without view of any Dfficer, 02 licence of any; but if they cut down so much as they leave not sufficient covert, and bruise wood for the game, they thall be punithed at the Kings fuit. And fo it is if a common perfon hath liberty of Chafe in other mens Woods, the owners of the Woods cannot cut down all the Woods, but leave fufficient for covert, and bruile, as bath been accustomed, no more then the owners of Woods in which others bate common of Estobers, can destroy the whole Woods, but leave sufficient for the

Effobers .

3. And being demanded whether in the Bings free Chales a man might babe common & feeding too theep, warren by prefeription or grant . It was refolbed cleerly they might, but they must not furcharge to the prejudice of thekings game, but the owner of the foil within fuch a free Chale cannot erect a Warren without a Charter from the king. And it feemeth to me that by prescription a man may have common for his theep within the kings forett : for, first, I find no anthor thority in our books (that I remember) against it; and that generally a man map common in a forest, it appeareth by Carta de foresta, Cap. 1. 33 E.1. stat.5. 34 E. r. cap. 6. And If for common in generall especially for common appendant fo much favoured in law, and particularly for Sheep, as wel as for Borfes & Mares. 12 H.2. Common 25. F.N.B. 230.a. And to conclude this point, the Paiozelle of Witcham prescribed to have common in the forest of Dickering, pro omnibus averiis fuis, except' caprellis, before the Buftices in @ire in 8 E.3. Rot. 31. which being found to be true was allowed to her, tc. and fuch a prescription may have a lawfull beginning by the Lings grant.

4. That he that hath a Warren within a free Chafe map build upon bis own inheritance within his Warren a convenient lodge for preferbation of his game. And Popham Chief Juffice before all the rest of the Judges cited the faib

cale of Selenger adjudged in the Erchequer,

Some queltion being moved between the Carl of Bott. Juftice in Cire in all the things forefts and the Garl of Dorfet Areafurer of England , concerning the dispoling of the Kings Woods in his forests; for resolving whereof by the Bings commandment all the Judges of England were affembled, tobo upon conference and mature deliberation refolbed thefe 7. points following.

1. That the Juftices in Cire , and the Bings Dfficers within his foreft habe charge of Menifon, and of Wert of Greene bue for the maintenance of piefervation of the Bings game, and therein of all manner of trees for copert, butile and pawnage. But when need is to fell feafonable woods flodia Rem. Regu. 12 E. 2. within his forest, or timber for his sparesties use, the same must be solt Con to fell the underwood or taken by force of the Breat Seal, or Elchequer feal by the view of in the Park of Clarendon. the forefter to the intent that the woods or the timber fall not be ta- fals in the Pork of Northac. ken in places inconvenient for the game. But the Juffice in Gire, or any of the Bings Officers within the fozelt cannot fell or Difpole of Clarendon. Nota, minuti any wood within the forest without Commission: and to the Erche. Ituerones quereuns Carlo quer and the Foretters have divisom imperium, the one for the profit of Curbin Forefla de Grovele the Bing, and the other for his pleafure.

2. That regularly neither the Court of the Erchequer,noz any of the 13. 4 E. 4. Simile Bings Difficers can dispose of the Bings timber of woods, but it ought to be done by Commillion, ic, as is aforefaid, for the Kings best profit.

2 That every man in his own Woods within the fozelt map take Boulebote I E.3 flat. 2.0 2. and Berbote by the view of the Forefters. The Bings Fermers that have claules in their Leales to take timber, tc. by blew, tc. may take the fame acco; bing. ly: and so may freeholders by prescription, and Coppyholders, which by cu-Some have used to take Housebote, ac, take the same by viely of the Foreffers, ac. or otherwise according to the custome.

4. It was refolved, that no Difficer of the Forest could claim Windefals or Dotard trees for their fees by prefertption, because they were once parcell of the 8 8.3. Ror 30. the Bings inheritance, but they ought to be fold by Commission, as before it appear

reth, forthe litings best benefit.

5. That he, that hath the Derbage, or Pawnage of a Parke by the grant or bemile of the Bing of any other, cannot take any Berbage of Patonage but of furplulage over and above the competent and fufficient Patture, and feeding of the game: and if the owner of the game fuffer the game fo to encrease, as there is no furplufage, then he that bath the Berbage and Calonage cannot put any Beatts in the Wark.

6. That the owner of the Park may olvide any competent parcell of the Wark with Rail, Pale of Deoge for the feed of the game in Winter, and be that

bath the Berbage cannot put any Beacts therein.

Laftly, if the Patture and Patonage of the Park be but fufficient to feed the Rot. Par. 18 E. 1. game in Wainter and Summer, the owner thereof map brive out the Beaffs of fo.16. the King him that hath the Berbage and Pawnage. And thereupon by like affent of all the Indges the Court of the Erchequer took this order following with fome reafonable additions.

Whereas heretofoze fome question hath been moved between the Lord Trea: The Order of luter of England, and the Marden and Chief Justice, and Justice Linerant of the Exchequer all the Lings Pajecties freetis, Chales, Parks and Warrens on this five the upon the refoluwater of Trent, what appertaineth to each of their offices and places concerns tion of the ing the bealing with and disposing of Woods, Trees, and Coppices within his Indges, Dighnesse Parks, forests and Chases, which being by his Pajesty referred to the confideration and determination of his Indges, and Barons, they have refolded touching the same by one uniform aftent, as hereafter followeth, viz. That as the Lord Treasurer of England sor the time being, and Court of Erchequer have the only ordinary power under the king to deal therein fo far forth as the same concerns the inheritance and profit of the Crown, as in the sale of Woods, Trees. Coppices and fuch like: so in like manner it concerns the Warden and Chief Juffice, and Juffice Irinerant of all the Kings Majeffies Foreffs, Chales,

In Baga de Forestis in Cu-17 E.z. Com' to fel Wind-28 Com' to fell wood in rend' virtute trevis domini regis. Simile ibidem 10, 11. 17 H. 6. virtute Literarum Pat. H.6.

Forest, ubi fup.

Vid Itin' Pick cafe of Williams de Perfey and Petroulla his

may grant Efto. versinhis Forch without view of the For fter.

Backs, and Warrens, and their ministers to deale therein so far as it may concern the preservation and maintenance of the Game, in respect of the chades, concerns, paiwnage, and such like so, the Weer. And therefore it is resolved by all their opinions, that the Lord Treasurer of England and Court of Erchequer may not sell any Woods or Coppices within any the kings Parks, Foreus, or Chases, (ercept windefals, rootfals, and meer dead and sore trees) without the privity and allowance of the said Warden, and Chief Bustice, and Justice Itinerant, within whose Jurisdiction it is: Por may cut down the dead and sore trees, nor carry them or windefals or rootsals away, but at fit times, and by the biew of such as have charge of the Game, whereby it may be seen unto, that the same may be done at fit and convenient times: and that no trees, other then those that be dead and sear, and meerly windfals and rootsals, may be thrown down or taken away without the privity and allowance of the Warden, and chief Justice, and Justice Itinerant of his Pasesties Parks, Forests, or Chases.

And as for the Warben, and Thief Buttice, and Buttice Itinerant, and the Reepers and other Ministers of Parks, Forests, and Chales appertaining to the hing, they may not cut bown any trees for new paling or railing, or for repair of Lodges, without the Warrant and allowance of the Load Areafurer of England for the time being : but timber needfull for mending of small defeas in old pales or rails that are broken, fo as the same do not exceed two or three time ber trees in any one Forest, Park, or Chafe, in any one year, they may be permitted to take of trees in places fit, without making wafe thereof, or any spoile or prejudice to the Bings inheritance, making the Bings Surveyor of the Woods speedily acquainted, who is to see that the same hath been accordingly well imployed: and needfull browle also in places fit, and times seasonable the Beepers may take for the Deer, not cutting down the limmes or great boughs of the frees. And therefore it is ordered by this Court, that from henceforth where it thall be thought requisite to fell any of the Kings Woods or Coppices within any his Parks, Forests, or Chases, that a Warit or Commission in nature of an Ad quod dampum thall be directed unto the Warden and Thief Juffice, and In Aice Itinerant within the Forests, within whose government the same is to be done, to enquire and certific what number of trees and what Coppices may be fold, and in what places with least prejudice to the kings Game; and that upon the retorn thereof, the fale thall be made of fuch trees and Coppices, as upon fuch Certificat thall be thought fit to be fold. And in like manner it is ordered, that for the new paling, and new railing, and new building of Lodges in any place within or about any his Pajefties Parks, Foretts, or Chafes, and the great repairs of old Pales, Rails, 02 Lodges in 03 about the fame; that it is to be Done upon Certificate from the Warden and Chief Buffice, and Buffice Itines

is, by Warrant from the Load Treasurer of England for the time being. It is very observable, that if any Act of Parliament hath been made against any of the Articles of the statute of Carra de Foresta, by the Ast of Paritament of 42 E, 3. the same is made void, and by the statutes of a Confirmationes Cart' all judgements given against any of the points of Carra de Forelta, shall be holden for boid. And where H.z. Fitz Emprese claimed that he might make Forests not only within his own Woods and Brounds, but in the Woods and Brounds of his Subjects, and thereupon made divers fuch Forests within his own and other mens Moods and Grounds: whereupon some Readers and others that have followed them are of opinion that H. 2. might De jure do that which he did. But this Act of Carra de foresta, which is but a declaratory law restoring the subject to his former right, is directly against that conceipt, in these words. Inprimis omnes forefta, quas Henricus avus noster afforestavit, videantur per bonos & legales homines; & fi c boscum aliquem alium quam suum dominicum afforestaverit ad damnum illius cujus boscus ille suerit, statim deafforestetur; & si boscum suum proprium afforestaverit, remaneat foresta, salva d communia de herbagio & aliisin cadem foresta illis qui prius eam habere consueverunt. To the same effect is the

rant, and the Surveyor of his Majesties Woods within whose jurisdiction it

42 E. z.cap. 1. a Confirm, Cart. 25 E.I. b Cart.de forefla. cap. 1.& 2. This is an Act of restitution, for if the King might havemade a Forest in other mens Woods, then could not the owner have felled down his own woods without view or licenfe, & fie ad daman illius, &c. d Nota, all manner of Commons arc faved.

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third Chapter. Reither could H. 2. 02 any other king have made 02 raifed a free Thale, park, or Warren for himfelf in any of the grounds of the fubjects; for it is truly fait in Pl. Co'that the common law hath fo admeasured the latings preroga. Pl. Com' Seignitives, that they fould not take away, not prejudice the inheritance of any. But or Becke ers me agree, that all the lands of the subject are originally derived from the Crown. And therefore when the ancient Bings had the most part in their own hands, of at least great Defarts, walte and woody grounds for want of habitation, they might make what Foreits it pleased them therein, which map be a reason and cause of a lawfull beginning, and therefore a forest may be by prescription good in law over other mens grounds. But the king in his own grounds map make a Forest at this day, which is also proped by these two Chapters, for such for reffsare thereby faved and enaded to ffand.

cafe fu. 236.

on of Beatts of Menery, and Fowls of Warren, ertending over the lands and grounds of divers and many Freeholders, and Coppibolders, within the Mans nors, Townships, and Hillages of Calimulley, Weltmulley. Walton, Cher, Elephitoge, and part of Tobham: and finding that he could not creat either forest or Chase over other mens grounds without their Consents, did agree with the Freeholders and cultomary tenants, as by his Indenture bearing date the first day of Doober in the 29 year of his reign, between him on the one part,

affigned and limited a certain Territory of grounds for nourithing and generati-

King H. 8. intending to make a Forest about his house at Hampton Court 3. H 8.cap. el

and Sir Richard Page Enight, Thomas Henage Clautre, and other the free: holders and customary Tenants in the Towns and Aillages aforefaid of the other part, wherein the Bing both name it (ad faciendum populum to: the easier vallage) Hampton Court Chale. But afterwards (in close words in severall places) that it should have all such and like Liberties, Jurisdictions, and Pozehe. minences, Laws, Statutes, Officers, tc. * as any Thale og Forest within this . Note Realm hab, ic. 'And all offences done within the fame, thould be punithed as if the same had been done within any Thase or Forest within this Realm. And the king did thereby covenant and grant, that the Freeholders and Coppyholders aforefaid might fell and take their Woods, Broves, and Coppices, at their will and pleasure without any view, sc. and to make their hedges and fences about their Coan, ac. to keep out the Deer, ac. And (fog recompence to both Freehol. ders and Coppyholders, tc.) that the third part of the free rent of every Freehold thould be deducted, and the moity of the fine of the heir of every Copytholder should be also deduced, sc. which Indenture and all the covenants therein being recited, it is enaced by authority of Parliament accordingly. By which Ad and divers generall clauses referring to Fozefts, the King intended to have it a Forest. But hereby it plainly appeareth both by the Kings said Indenture, and by the judgement of the whole Parliament, that the Bing could neither erect any Chase of Forest over any mans grounds without their consent and agree. ment. And pet King H.8. did fand as much upon his Prezogative as any King of England ever did.

But to joyn this new with fome that is ancient. In Rot. Parl. anno 18 E. r. there is a notable Record in these words:

Rogerus Episcopus Coventr' & Lichf. queritur contra Rogerum Ex- Petitio Episcopi traneum & socios suos Justic' Domini Regis de Foresta in com' Staff. Covert Licht. Eo quod seis. in manus Domini Regis boscos ipsius Episcopi de ma- os forcitz. neriis suis de Cannock & Ruggeleghe, &c. Rogerus & alis Justiciar' ven' & dicunt, quod in Itinere suo prasentatum fuit per Viridar', Forestar & alios fideles Domini Regis, quod pradicti bosci super Dominum Regem & ejus progenitor per ipsum Episcopum & pradecessores suos purprestabantur. Et eo quod licet eis Justiciariis in Itineribus suis purpre- Purprestur'. sturas factas infra metas foresta Domini Regis in manus Domini Regis seisire, ideo seisire fecerunt, &c. Et Fpiscopus bene concedit quod sunt infra metas forest.e: Set dicit quod Rex Ric' per cartam suam Dat' 4 die De-

Gnowfhall.

Nota, in boscis deafforestaits per cartam licet fugare, & voluntamiem inde facere; à fortiori, in boscis deafforestat virtute Adus Parl. de Carta de Foresta.

38 H.6. fo. 10.3c'

Adjorned into

Deafforestatio per Chart. Nota.

" Nota, infra metas foreflæ, &. tamen extra foreflam. Forefla de Cannock.

See hercafter

1 E.7.ca.1.ffat.2. Rot. Parl.1 R.2. nu.61. § R.2.84.

cembris Anno regni (ui primo dedit Hugoni tunc Episcopo Coventr' & Lich. pradeceffori suo & successoribus suis dicta due maneria cum Ecclesiis, bundred', & omnibus aliis libertatibus. Et per aliam cartam dat' 30 Nov. Anno regni sui primo concessit dicto Hugoni quod omnia maneria sua terra & omnes homines sui & feod' Ecclesia de Covent & Lichf. de Cest? & Salop, & de Gnowshall & omnium Ecclesiarum suarum, libera effent & quieta de foresta, & de placitis foresta, de vastis & assartis & regardis foresta, cum multis aliis libertatibus in eisdem cartis recitatis, &c. Virtute quarum Cartarum, ipse & omnes pradecessores sui à tempore confectionis eurundem Cartarum folebant fugare in dictis boscis, & voluntatem suam inde facere, Ge. Et petit quod Dominus Rex, Gc. Et pradict' Juftic' dicunt quod Dominus H. Rex pater Domini Regis nunc fuit in seifina dictorum maneriorum & boscorum. Et scrutatis Rotulis, & Brevibus Scaccarii invenitur primum breve regis H. Anno regni sui 14 Vic' Staff. direct', & quod [ciat, quod reddidit A. tunc Episcopo Covent' & Lichf. dicta maneria, &c. Item 2 alia brevia Baronibus de Scaccario direct' quod computent Vic' Staff. 30 .6 d. pro med' pro Anno 14. Item comp. &c. 61 . pro Anno 10 pro dictis maneriis, &c. Et prad' Iustic' dicunt, quod patet per easdem cartas quod carta per quam Episc clam' effe quietus de foresta, &c. data fuit & facta ante cartam per quam dictus Rex R. dedit Episcopo, manerium & boscos pradictos per quod dicunt quod pradictus Episcopus non potest clamare dictos boscos esse quietos, &c. per formam dicta Carta facta ante donationem dictorum bofcorum: ob quod datus est dies dicto Episcopo, &c. in unum mensem ad parliament. &c. Postea ad Parliamentum nunc, &c. venit pradict' Episc. in propria persona sua & reddidit Regi dictos boscos ut jus ipsins Regis. Et idem Dominus Rex ex gratia sua concessit & dedit eosdem boscos pradicto Episcopo per easdem metas, bundas & divisiones per quas ipse & pradecessores sui à tempore confectionis Carta pradicta Richardi Regis boscos illos tenuer', &c. Et quod habeant & teneant liberos ab omnimodis placitis foresta, &c. * Et quod nec Insticiar' foresta seu Forestar' Viridar' & Regardatores seu alii ministri quicung, se intromittant infra metas supradictas licet sint infra metas foresta antiquas de Cannok. Et pro hac, &c. idem Episcopus cognovit se teneri Domino Regi in mille libris sterling.

Deferve well this Record, and the parts of the same. And it is to be known, that where divers perambulations were made in the reign of H. 3. E. 1. and E. 2. that all these parambulations and others that would be made (albeit there be no Charters thereof now extant) are established and made good, both by the statute of 1 E. 3. cap. 1. stat. 2. in print: and by an Ast of Parliament in 1 R. 2. nu. 61, in the Roll of Parliament and not in print; and by another Ast of Parliament 5 R. 2. nu. 84. not in print. For albeit it be to be presumed that Charters have been made according to the Perambulations; yet soralmuch as time wears out many things, if Charters should note be required, many places should become sorest againe, which now are in peace and deastorested.

The form of the perambulation of a forest is, Perambulatio facts in Com' Eborum de forests de G. die Anno Regis, &c. apud E. coram A B. C D. Justiciariis Domini Regis ad dictam perambulationem faciend' assignatis per seramentum F G. M P. N S. &c. Qui dicunt super Sacramentum suom, &c. And so set down the metes and bounds of the forest, thewing what is within the forest, and what to be extra forestam secundum renorem Magna Carta de forests, eo quod associatas sucrit post coronationem Domini Henrici Regis 2, &c,

In cujus rei testimonium, &c.

Note, the Charters be generall and thout to this effect. Rex omnibused quos prasentes litera pervenerint, Salutem. Sciatis quod volumus & concedimus pro nobis & haredibus nostris, quod perambulationes facta coram A B. C D. ad hoe assignat' per praceptum nostrum de forestis nostris in Com. Eborum de catero teneantur & observentur per metas & Bundas contentas in eisdem perambulationibus, quarum tenor de verbo in verbum sequitur in hunc modum, And rehearse the whole perambulation.

A long complaint in Parliament against Foresters, for afforesting of mens Rot. Parl. 22 E.3. purliens, for undue triall, and for their ertortions, too long here to be rehearfed, nu. 16. but worthy to be read, with a prayer that the great Charter may be kept, and that all men map enjoy their purlieus according to the perambulations made in the reign of king E. 1. whereunto the King answered, The King would the great Charter to be kept : and that fuch as will complaine in the right of their purlieus, may have Carits out of the Chancery.] See Rot. Parl. 50 E. 3. nu. 80. &

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Purlieu containeth fuch grounds which H.2. R. 1. 02 Bing John added to their ancient forests over other mens grounds, and which were difafforested by force of the statute of Carra de foresta, cap. 1. & cap. 3. and the perambulations and grants thereupon. And is derived from a French Adjective and a French Rown, viz. Por which fignifieth clear, entire, and exempt, and Lieu, that is a place entire, clear, or exempt from the Forett. And both of these perited from the Latin Adjective and Bown, viz. purus locus; and in this fense the Civilians talled that purum locum qui fepulchrorum religioni non est obstrictus, And the perambulation whereby the purlieu is deafforefted is called in French Pouralles, i. perambulatio, to as the purlieu and pourallee are two diffind things, and * purs 33 E. a. flat. g. lien is the right name of the place deafforeffed.

By this it appeareth that Chales that never were any Forests cannot have any purlieu, and confequently the cafe in 16 Eliz. Dier 326, 327. is miffaken, for the Chase of Whaddon never was any Fozest. Whereby it may be observed; how necessary the true derivation of words is, according to the example of Little-

ton, as in divers parts of the first part of the Infliences appears.

By this deafforestation the owners of the grounds within the purlieu map at their will and pleasure fell, cut down, eradicate, and flub up all the Timber, Moods, and underwoods; convert their Pattures, Peadows and other Grounds to arable, inclose them in with any kind of inclosure, build and ered new edifices upon the same or any part thereof, and to dispose and use the same after the disaf-

forestation, as they never had been afforested.

And where some have conceived, that quoad to the owners of the sople the purlien is difafforefted, but not as to others, but as to them it thould remaine a forest, by reason of these words in the first Chapter, ad damnum illius cujus bosens ille fueric, those words were added to thew the unlawfulnesse of the affor reffation, because it was ad damnum, &c. as bath been proved before. And then these men must make a diversity between a deastogestation by souce of the first Chapter of afforestations in the reign of H.2. And deafforestations made by force of the third Chapter of afforestations in the reigns of R. 1. and King John, for there the clause of ad damnum is omitted, and therefore those afforestations are utterly made boid against all men.

The fratute of Carra de foresta bath been above 30 times, and laftly in 4 H. c. confirmed and enaded and commanded to be put in execution, and we finde no authority in law that we remember against our opinion herein; therefore we proceed and bo hold, that in any purlieu a man may as lawfully bunt to all intents and purpoles within the purlicu within his own grounds, as any other ow-

ner may do in his grounds that never were afforested at all.

Some have endeaboured to limit the purlien man to hunt by cultome of piescription, but all the said statutes were made within time of memory against which they cannot prescribe. Some endeabour to maintain it to be by Forest Sect. 170, law, but it is questioned whether there be any such Forest law, in that point, for

4 Purlien what it is, and whereof derived.

See the firft part of the Institutes

Quod non legitur non creditur: but to conclude this point, po forest lato can stand against laws enaced by Authority of Barliament. Dithers think, that the fain Statute of 23 E.1. flat.5. og fome other statute in the reign of E. 1. E. 2. og E. 3. Doe in some fort restrain their hunting, which is utterly benyed, that they are re-Arained by any fuch in any of the faid kings times; but if any fuch fratutes were. they are, being contrary to the flatnicof Carra de Foresta, repealed by the flatnice of 42 E.3. cap. I. And all the Statutes of Allifes, either that of Woodfrock in the reign of H.2. 02 any other in his time, 02 in the reigns of R.1. 02 ling John are all abrogated by the flatute of Carra de Foresta made in 9 H. 3. cap. 1 . & 3. as to the Deafforeflations, &c. And the flatute of Affle of Woodflock both ertent to Deafforestations before and not after , the words thereof being, Nullus faciat aliquam installatione inter foresta & boscos, &c. p ipsu vel progenitores suos deafforestatos. And for the same reason the Purtieu man may keep his bogs within the puritien emerpeditated, and feeing the wilde Beatts dos belong to the puritien man ratione foli fo long as they remain in his grounds, he may kill them, for the property ratione foli is in him; fo as hereby concerning purlieus, and by the refolution of the Judges concerning Chases, it appeareth, that the makers of the statute of 22 E. 4. missor the law in both of them, viz. concerning Chafes and Purlieus, but the flatute being in the affirmative worketh no prejudice to any. And if he chafe them with Greyhounds, and the Beafts of the forest bo flee towards the forest for their lafety, if the owner pursue them to the bounds of the forest, and then call back his bogs, and do his endeavour to call them a. gain from the purfuit, although the dogs follow the chafe in the forest, and kill the kings Deer there, this is no offence, fo as the owner enter not into the for rest, not nieddle with the Deer so killed. But if the dogs fasten upon the Deer. before he recover the forest, and the Deer drag the bogs into the forest, there the Burlieu man may follow his dogs and take the Deer.

In some Letters Patents of the perambulations of purallies of sozeks made by Bing E.3. to any County where lands are difaforefled, which we have feen. there is referbed to the ling forty daps for his wild Beafts within the purliens to return again, and for his raungers within that time to rechale them into the fozelt, which is taken to be a combenient time for that purpole. And albeit thele puritieus be absolutely disasozetted, and have no liberty of sozet there, pet for conveniency it bath been permitted that the Rangers of the forest should as often as the wild Beaus of the forest range into the purlieu, with his bound rechain the same : and these Rangers have used to present unlawfull hunting and Hom: ters of the Kings Deer within the purlieu, as in the night, of at unfeafonable Deer, or killing of the Kings Deer in purlieus by no purlieu men, but unlawfull Hunters of the like: fach as thould not take abbantage of their often furong both to the king and the purlieu men, and that they are known to be Deer be longing to the Bings forest, because there are no other within the purlieu; wherein the best rule we can (for abothing of tedionineste) give the Reader, is to follow the judiciall Records and Prelidents of the Eires holden before arabe and learned Juffices in Eire, as those of Wickering, Lancafter, the like, concerning presentment of matters sone within the purlieus of the Rangers wherento we do rather incline, when we confider the oath which the Rangers have anciently ta: hen a continually in these woods. You shall truly execute the office of a Ranger in the purlieu of P. upon the border of the Kings forest of P. You shal rechase with your Hound & drive the wild Beafts of the forest, as often as they shall range out of the fame forest into the purlieus; You shall truly present all unlawfull hunting and hunters of wilde Beafts of Venery and Chafe * as well within the purlieus, as the forest, and those and all other offences you shall present at the Kings next Court of Attachments, or Swammore which shall first happen: So help you God, And it is to be noted, that in fuch forests, as have no purlieus, there is no Ran-

It was petitioned in Parliament, that no man be impeached for hunting within the purlien or without the bound of the forest, and that there be levied no affart rents.

Ror.Par.51 E 3.

22 E.4.cap.7.

43 E.3.8.the Earl of Arundels case.

38 E.3.f. 10.b. fimile, 12 H.8. fo. 10, a.

20 E. 3. Rot. Pat. 1 pars pro deaf. forest' Forest z de Kemsam.

Vide Rot. Parl. 12 E.3.nu.26,27. a complaint of the purlieu men, and the Kings answer.

The oath of the Ranger.

* This proveth that the purlicus are no part of the Forest, but differed things. Kot. Par. 51 E.3. no. 39.50 E.3. no. 80. 1 R.2. no. 67.

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This Petition confiding on two parts. 1. Concerning hunting in the putlieu, or out of the boumbs of the forest, the fecond concerning affart rents.

To the first: the ming answereth, That the Charter of the forest thall be kept. tobich is a peelbing to the Petition for that part, for by that Charter the bounds of the foretts are established, and no puriteus excepted.

As to the fecond: he answered, That the demand was unteasonable.

The Commons made Detition that men might enjoy their puritens freely, 2 R. 2.00.48. and that perambulations might be made us was in the time of hing H. ?.

delibereunto the lating and wered , The King thinketh the perambulations are

duly made, and who will, may complain, and shall be heard.

The Abbot of Whithy had a fotest called Whithy fogelt (by the grant of In Itin' Pick. H.2. and Bing John with all Difficers incident thereunto adjoyning to the forest of the Carl of Lancafter talled Pickering forest, and the game of the forest of Dickering ranged into the forest of Whitby , Idem Abbas habens exploratores fuos statim ponere fecit retia, & alia ingenia sua juxta Hakenesse & alibi distan' à foresta ista per tractum umus arcus & aliquando plus, & postea cum canibus excitare fecit feras, ita quod p excitationem illam plutes ferarum illatum in redeundo & fugiendo versus forettam de Pickering decidunt in retibus & ingeniis pradictis & capiuntur, & annuatim capere facit in destructionem ferarum foresta pradicta de Pickering ad dammum domini, & nescitur quo Warranto; per quod praceptum fait Vicecomiti,quod Venire faciat prædictum Abbatem. Wiferenport the Abbot came and pleaded his title to the forest, ut fupra. Et quod omnes Abbates loci prædict' virtute Concess',&c. prædictos cervos & cervas in locis prædictis ubi retia & ingenia prædicta posita fuerunt, & quæ suerunt infra limites Foresta fuz de Whitby, & quoad quod idem habens exploratores fuper feras domini, &c. retia & ingenia poni fecit prope forestam de Pickering, &c. per quod in redeundo plures fera capt' fuerunt, quod ommino eft contra Affis' Forefta, ide Abbas dicit, quod ad hoc respondere non debet, &c. Et quia manifelte liquet Curia, &c. quod feræ de Foresta ad Forestam alirer conferri non possunt, nisi ipsius in cuius Foresta inveniuntur, eo quod figno aliquo non confistunt fignata net divisas aliquas cognoscunt, Ideo consideratum est, quod idem Abbas eat fine die.

By which Record and many others it both appear, that when the lafings Bame of the forest doe range out of the forest (and partien, it any be) they belong not to the Bing, but are at their naturall liberty, & occupanti concedentur.

And this is the reason that some have said, that where the lating was seised of the forest of M. in fee, and that a custome was pleaded time out of mind, that if amp Beatt of the forest thouse range tito the free chafe of the Abbot de Dien adjoyning to the faid forest, that the Foresters of the fait forest, sc. might enter into the faid chafe, and with little bogs rechafe the Mings Beaffs of his forest into the forest again, that this custome is against law, for that besides the reason prelied in the Abbot of Whichies case) immediately when they are out of the bounds of the forest, the property is out of the king, for the being within the forest maketh the property in that case. But the book of 7 H.6. wieft at large inhether the prefeription be good or no, and pet aid was thereupon granted : and Dier 1 6 Eliz. 326,327. agreeth therewith. But in the Abbot of Wilhitbies cafe there is no prescription for the King, but against him.

It is to be observed, that by the law of the forest when any claim is made by any ancient Charter of any Franchile, Liberty, og 3mmunity, og difcharge with. in the forest by ancient and obscure tearms and words, the entry is (for example) Et quia non liquet curiz manifeste cujulmodi libertates pradict' vocabulorum idem Prior habete intendit, dictum est Priori quod prædict' vocabula declarer, &c. And after he that maketh the claim, beclareth, that is, explaineth the fame, and pleaneth further, Quod iple & prædecessores sui semper à confectione Cartæ pradicta fine interrupcione uff funt & gavifi funt libertatibus pradictis (according to his declaration) & hoc paratus eft verificare per ministros istius Foresta; &c. Ideo inquiratur rei veritas per coldem,&c. D; the entry to after the beclaration made, Et quia videtur Justiciatiis quod expediens est & necesse, quod Curia cer-

Nota, for Harts, Hyndes.

The Kings Deer are not branded or figned with any mark, that they may be known whose they are out of the Forest. 7 H.6.fo. 36.

Lib. s. fo. 104.5. Rolftons cate.

16 Eliz.Dier 316,

Vide Itin' Pick. 8 E.3. The Prior of Ellorcon cafe. Ror.35.Et ibid. the Prior of Maltons cafe.

Regula.
Hil. 6 B.3. Rot.
179. Coram Rege
diuturnitas &
long zwa possessio
virtute generalis
verborum in antiquis Cartis sufficiunt.

8 E.3. Itin' Pick. Lambstons case putura. Geldű in Domesdaysæpe pro Scot Anglice.

23 H.3.gard 148.

tioretur super possessionem ipsius Prioris in hac parce, in quiratur sinde veritas per ministros ejusdem Foresta, and thereupon the Forestas. Aerderers, and Regarders are sworn, and so much as they find have been continually used, is allowed, and so much as hath not been used is disallowed; so as Ase and continually possessions are the best Expositors of ancient and obscure woods.

For example: Quictum effede mifericordia Forefiz, is to be quit of all americaments in the which he in any fort might fall within the forest. And here mife-

ricordia is taken as well tog a fine, as tog an amerciament.

Tould not be amercied, not for any other wast.

Quietum effe de rewardo, that is, to be quit of amerciament inheresoeber in

any warith within the forest, if the usage bath been accordingly.

T Quiet'de omnibus geldis, i. quiet'esse de omni putura Forestar', & de omni præstatione, ad collectionem garbarum, agnorum & lanz ad opus forestar'ejus dem foresta.

The Woodgeldis, i. quiet' effe de omni collectione in foresta præd'ad opus

quorumeunque ministrorum forest præd' ratione boscorum.

The Horngeldis, Quietum esse de omni collect' in foresta de bestiis cornu-

The Foregeldis, is quiet' effe de finibus & amerciamentis pro canibus infra forestam inexpeditatis, if the usage bath been accordingly, otherwise not: for anscient Charters by the law of the forest must be adjudged according to the continued usage, and not ex vicermini.

The Bucstall, i. ubi homines convenire tenentur, ibidem convenire ad stableiam faciend' circa feras, & ad eastern congregand', quietum esse de hoc servi-

eio, quando dominus chaseaverit.

The Triffris, anctently twitten traiffis, and is berived of traiff, i truff, and fignifieth, ubi alii homines manentes in eadem foresta tempore quo dominus chaceaverit in eadem venire debent, & confis sunt, Anglicè are trusted, ad tenend' Leporarios certis locis assignatis pro feris ibidem expectand' & capiend', quietum esse de hoc servicio.

The Fledwite, of fled, a Saron word, a fugitibe, one that fleeth, an outlaw,

and wice a Saron toood alfo, a freedome.

The Carcio, cum alique Carre, seu carcete carrete transcuntes per forestam, & similiter formagia, seu Somagia equorum consuct sunt solvere secundum magis vel minus ministris ibidem pro chemino ibidem habend. Quietum esse de hujusmodi solutionibus. Sumagium or Somagium commeth of the French word somiero sumier, which significant poste carrying any load. Chimagiu, a Toll sor way-faring men through a sorest, berived from the french word Chemin sor a way.

The Scoto, sen Shoto, quando homines faciunt collectum inter se ad aliquod obtinendum seu evitandum. Quietum esse de tali collect. The taliagio, idem

ut de Scoto-

TExtra regardum foresta. If any man within a forest doe hold his woods or lands by grant or prescription to be extra regardum foresta, the woods or lands are deastorested.

Exilium, i. cum homines utlegantur in Icinere istius foresta pro transgressi-

one Viridis seu Venationis,

T De escapio, secundum Assisam foresta si averia alicujus in landis vetitis, vel tempore vetito in eadem inveniantur, prima vice pro quolibet pede averiorum pradici ipsi quorum suerint amercientur ad unum denarium; & si secundo ibidem inveniantur, similiter pro quolibet pede unum denarium; & si tettio ibidem inveniantur, averia illa remaneant domino sorissacta, de quibus amerciamentis & sorissacturis per hujusmodi vocabulum, de escapio, extiter quieti.

De Pannagio, that is, to be quit to pay any thing for patonage.

Affertum, Affert, is so called of the effect (as some hold) and is derived (lay they) of ad and sero, affero, because of wood grounds, marishes, or wast grounds they

" Carta de Forefta cap. 14.

8 E. lein' Pick.

fo. 149.

F.N.B.230.

they are converted to be solun with Com, and therefore in the Register, & F.N.B. It is implified affecture, with an E. and so it is in Carta de Foresta cap. 4. Bracton hereof saith, Illud quod fuit aliquando boscus, & locus vasta solitudinis & communia & jam inde efficieur assartum, vel redactum est in culturam. And here with agreeth Fleta, Illud olim suit soresta & boscus, &c. & jam efficieur assartum, & reductum est in culturam, & idem dici poterit de mariscis & aliis vastitatibus in culturam redactis.

Dithers fetch it otherwise, but we hold, that it is derived of the French word effarter, to grub up, or clear a ground of wood, et. and this appeareth by Domefday. Herefordsh. Merchelay in codem manerio sunt 58 acra terra proved de sylva, written over the same essars, de essars sylva exeunt 17 s. & 4 d. E. being

turned into A.

Radulphus episcopus Karleol petit versus Priorem Ecclesia Karleol decimas duarum placearum terra de novo affartarum in Foresta de Inglewood, quarum una vocat' Lynthwayt & alia Kirthwayte, que sunt infra limites parochia sua de Aspaterick. Et super hoc similiter venit Mr. Hen. de Burton persona Ecclesia de Thorisby, & easdem decimas clamat ut pertinen' ad Ecclesiam Suam. Et Prior venit & dicit quod Henr. Rex vetus concesit dictodeo & Ecclesia sua beata Maria Karleol' omnes decimas de omnibus terris quas inculturam redigerent infra Forestam, & inde eos feoffavit per quoddam Cornu eburnen quod dedit Ecclefia fua pradict', &c. Et Willielmus Inge qui sequitur pro rege dicit quod decima pradict' pertin' ad Regem & non ad alium, quia sunt infra bundas Foresta de Inglewood: Et quodrex in Foresta sua pradict' potest villas adificare, Ecclesias construere, terras affart are & ecclesias illas cum decimis terrarum illarum pro voluntate sua cuicunque voluerit conferre, &c. Et quia dominus rex super pramis' vult certiorari,ut unicunque tribuatur quod suum est, asignetur, &c. et certificent regem ad proxim' Parliamentum &c.

" Purprefture. For this and the derivation, fee in the Second part of the Inflitures, Statutum de Bigamis cap. 4. and the exposition upon the same, and

Carra de foresta cap. 4.

b Coopartura is a Thicket of Cobert of wood.

q 'Maeremium is derived of the old Mamandy wood Marifme for Timber.
q d Scotales, Scotales, derived of two English woods Scot and Ale, as much to fay as a tribute of contribution of definiting for the ministers of the forest when they came to the house of any, whereunto others are contributory within the perambulation of the forest, which then was called 'potura, a denking. And mater they claimed the same for all victuals for themselves, their Servants, Horester, and Dogs, which was called putura; and this doth notably appear by a Re-

coad in 5 E. 3. in thefe twoads.

Inquando per balivos hundredorum, recipere victualia, tam profeipfis, hominibus, equis & canibus de tenentibus & inhabitantibus infra perambulationem foresta fen hundredi quando eo per venerint, nihil inde folvend'. Where the statute of Carta de foresta speaketh. Nullus forestarius seu balivus de extero faciat Seotalas, &c. & by the statute of 25 E.3. It is enanted, that no forester or sheeper of sorest or Chase, nor any other opinister shall make or gather sustenance, nor other gathering of Altunals, nor other thing by colour of their office against any mans will within their Bailiwick or without, but that which is due of old right, that is, those fees, which time out of mind they ought to have within that sorest, and as shall appear to be due by the oath of 12 Regarders.

Regist. 157.
Flecali. 2.c. 35.
F.N.B. 326.f.
Cart. de Forest.
cap. 4.
Bract. li. 4. fo 226.
Fleta li. 4. ca. 22.
Lib. 2. cap. 25.
Vide Lucubr. Ockam 20.b.
Rot. Par. 51 E.3.
nu. 39.

Rot. Plat. Parl. de Anno 18 E. I. Rot. 8. Inter Episcopum Karleol' & Priorem ejusdem de decimis atlartorum.

a Glanv.li.g.cap 11,12. Fleta lib. 2.cap.35.18 E.1. de visu Franc' pleg. Dier 7 El. b Cart. de Foreft. cap. 12. c 8 E.z. Itin' Pick, fo.17. d Cart.de Forest. cap.7.Fletali.3. cap.35.Cap.Itin' W.1.cap.4.de Paffur' pauperu. e Potura. Vid.45 E.3.15.& F.N.B. 209.b. De potura pau-perum, a drinking or fuftenance for the poor.12 H.4. 24. Hil.; E.3. Coram rege Ro. 30. Eborum. 8 E.3. Itin' Pick. fo. 150.b. Putura. f 8 E.3. Itin' Pick.

Prior de Ellortons case. Quiet' de geldis is to be quit de pieura. g 25 B 3. cap. 7. stat. Cap. Itineris fillenale, of the Saxon word fillen, or fullen, and ale, i. an Ale feast, whereat they were filled with Ale. Bracton lib. 3. fo. 117. in reciting of Capitula Itineris, calleth it Filckale, r. Fildale, an extortion colore composationis. Vide Fleta lib. 1. ca. 20. Catta de Foresta cap. 7.

T Chablicia

2 E.3. Irin' Pick. sir John de Melfacs cale.

Fleta li.1.e.47.

Carta de Fore-

fla cap.6.

Chablicia, of Cablicia, browle wood, derived of the French word Chablis. as boys Chablis, either rent bown from trees by the wind, or branches of trees cut for the browle of Deer.

Parkebore, to be quit of encloting of a Park of any part thereof, beribed of

two Englith woods, Parke, and bore.

Brigbote, 02 Bruckbote, to be quit of making of bridges.

Pannagium, of panagium, is berived from the French word panage, i, paflura pecorum in nemoribus de glandibus & aliis fructibus arborum.

Expaaltare canes, expeditare canes, Expeditatio to Derived of ex & pede,

Trin. 2 E.3. Co. because the Dog is lamed in the foot, inexpeditarus is unlamed. ram rege Rot.12.

Canis in this Act is taken for Mastivus by these words, talis expeditatio fact'o Affifam communiter uficatam, which hath reference to the Affife of the Forest. tempore H.2, Art. 6. which speaketh only de expeditatione Mastivorum, & Affis' & Consuetud' Foresta, 6 E.1. cap.9. speaketh only de mastivo.

ortelles, this wood is taken from the French wood Orteiles, in English.

Clains.

Cartade foresta ubi fupra.

Pellora, of the French wood Pelore, and they from Pila : In this Act it is taken for the ball of the foot, fine pelora, without the ball of the foot. And there: fore by the expresse words of this Act the ball of the foot of the spatisfie is not to be cut off, but the three claws of the forefoot to the skin. This extendeth only to maftiffs, and to no other Dogs, for Ubinon eft lex, ibi non eft transgreffio; and necestary it is, that such as dwell in sozests where there are coverts, that they thould keep other Dogs unerpeditated , and the Pattiff erpeditated for the De: fence of their honle, or for giving of warning of Theeves and Robbers, tc. Moloffus (the old Britith word) is a Bafe theef, because he both mase or amase a Theef, ac.

Managium & melagium, to commonly in ancient iR ecolds taken for mela-

agium.

The words of this Ad are De expeditatione Canum existentium in foresta. and therefore in putlieus or places deafforefted, a man may keep a Paffiff with out being expeditated. And that I may fag it once for all, my intention is chiefly to explain the obscure words of this flatute of Carta de Foresta, and other Ads, and leave the Reader to the text it felf being plain: for, Satius eft petere fonces, quam fectari rivulos.

Who may keep Greybounds or other Dogs to bunt, or Ingens, &c. either in

a forest, or out of the forest, appeareth by certain statutes.

But if Dzeyhounds be found running ad nocumentum, the Forester ought to retain them, and present them in the presence of the Werberers, and send them

to the Bing,o; to the Thief Juftice of the Fozeft.

THE find not that any Chapter of Article of Carra de Foresta, doth ertend to Chales of Parks, but only the it Chapter. Quicunque Archiepiscopus, Episcopus, Comes vel Baro ad mandatum nostrum transierit per forestam nostram,&c. which Chapter doth not only extend to the Fozelts of the king, but to his Chafes and Parks also, for so was the law before the making of this Act, which is but in affirmance of the Common law of the forest before this Act.

1. In respect of the persons, for every Lord of Parliament, be be Spirituallor Tempozall, had this priviledge besides those that be named in this Chapter, as such Abbots and Priors, as were Lords of Parliament, and so of Dukes, Parquelles, and Ailcounts, which were ereded and created, afterwards being Loids

of Parliament have the same priviledge also.

2. By reason of the kind of commandment ad mandatum nostrum, saith the statute, which words have reference to the Wirit of Parliament directed to every Lord of Parliament. Ideo vobis mandamus, &c. and is a legall commandment by writ directed severally to each and every Hord of Parliament to appear at the Mings Court of Parliament, to to treat de arduis & urgentibus negotiis regni, flatum & defensionem regni & Ecclesia Anglicana concernentibus, and to recreate themselves veniendo, and after redeundo, they may passing by any of the kings

M.S. Priorat. Co. vent' fo. 1 4.b.

12 R.2.cap.13. 19 H.7.cap. 11. 1 Jac.cap. 27. 3 Jac.cap.13. Affifa Foreft'.

8 E . frin' Pick. fo. 134. A Forefer or any other Officer of the forest connor give a Noblemin a course in the foreft but it is presentable.

hings Foreits, Chales, or Parks, hunt and kill one or two of the kings Deer. The Lords of Barliament may doe it at other times ex gratia , but by lameundo & redeundo, to and from the Parliament.

3. Here is implied that the Lord of Parliament may in the absence of the Forester of theeper after the blowing of the horn, kill one or two of the things

Deer, propriis suis canibus, aut arcu suo proprio.

lis,

ees

of

2.

4. Here is a fecret conclusion of Law , that albeit spirituall persons are pios nature Clerico, hibited by the Canon law to hunt, yet by the Common law of the Land they may for their recreation, to make them fifter for the performance of their butp and office, ule the recreation of hunting, as here it directly appeareth: And in Affifa Affifa forefix. Foreita 6 E. 1. it appeareth that the Abbot of Peterbozoto had a right of hun: 6 E.1. ting in the forest of Rockingham. And this appeareth in other statutes, viz. 13 14.2 cap 13. 13 R.2. 19 H. 7. 1 Jac. And at this day, and time out of mind, the Ling hath 19 H 7 cop. 11. had after the becease of every Archbishop and Bishop (inter alia) Mutam fuam Muta canon is canum,&c. his Bennell of Bounds, og a composition for the same, which and derived from the other things are in the Orchequer called multa.

5. The last conclusion is, that all Canons against the Laws or Customes

of the Realm are boid and of none effect,

f Of the drifts of the Forests, Agitatio Animalium in Foresta.

The drifts of the forests are faid to be when all the Cattle as well of Commoners as of Strangers are Daiben by the Difficers of the foreft to fome certain Bound or place inclosed, and the end hereof is threefold, viz. First, to fee whe ther those that ought to common doe common with such kind of Cattle as by prefertytion or grant they ought. Secondly, if they common with fuch Cattle as thep ought, whether they doe furcharge or no. Thirdly, if the Cattle of any Stranger be there, which ought not to common at all.

By the statute of 32 H. 8. it is enacted, That all Forests, Chases, 32 H.8 cap. 13. Commons, Moors, Heaths, and waste grounds within the Realm of England and Wales, and the Marches of the same, and every of them shall be driven at the Feast of St. Michael the Archangell next comming or within 15. days then next after, and so yeerly to be driven by the Lords, owners, and possessor of the said Forests or Chases, or by the Officers of the same, and by the Constables, Headboroughs, Bailifs, Bursholders, and Tithing men, within whose offices, precincts,& li i its the Commons, Moors, Marishes, Heaths, and wast grounds being out of the Forests and Chases be or lie upon pain of xl. s. to be forfeited to our faid Soveraign Lord the King by every of the faid Officers, Bailifs, Constables, Headboroughs, Bursholders and Tithing men, as often, and at every time as the faid drift shall be omitted or left undone, or not effectually done within 15. days after the faid Featt of St. Michael the Archangel, as is aforefaid. And it shall be also lawfull to the Lords, owners and possessioners of the said Forests and Chases by their Officers of the same, and by the Constables, Bailifs, Headboroughs, Bursholders and Tithing-men, and every of them within the limits of their offices to make like drift of the faid Forests, Chases, Commons, Moors. Marishes, Heatlis, and wast grounds at any other feason and time of the yeare whensoever, and as often as they shall think meet and convenient.

Dut of this Act of Warliament, as to the drift of the Forest or Thale, thele conclusions are to be observed. 1. By what persons this beit is to be made, and therein if the forest be in the Kings hands it must be made by all the Kings Dis

Linwood de Ve-Cart. de Fereila French word muit de cheines. Sec 25 H.8.cap.

ficers of attendance in the forest, and by four men and the Reve of every Town within the forest, who to that purpose are included under the name of Difficers. And if they be in a subjects hands, then either by the owners or possessors of the faio Foretts, or Chafes, or by fuch Officers, as is before faid. 2. At what certain time fuch betft in forests or chafes is to be made? It appeareth by this Ad that it ought to be effectually done yearly within 15. days after the Featt of St. Michael the Archangel. 3. The faid difft may be made at other feason or time of the year whenfoever, and as often as they shall think meet and conventent. 4. That stoned Horses under 15 handfull high are prohibited to Com: mon in any forest. See the statute. 5. For Commons,&c. out of any Forest or Chafe. In thefe words are included Purlieus and other grounds wherein men have Common, and those are to be britten by the owners and postestioners of the fame, and by the Conffables, Beadboroughs, Bailifs, Burtholders, and Tithingmen, within whole offices, precinas, and limits the faid Commons, tc. be ing out of any forest, or chase doe lie at furh times are aforesaid.

Ayer'es of Hawks 8 E. g. Itin. Pick. Sir John de Melfaes cafe.

29 H.8. tit.Officers, Br. 47.

The statute speaketh De Aeriis Accipitrum, Espervorum, Falconum, Aquilaru, & Hieronum, which is but in affirmance of the Lommon law, for it extendeth to Aperies of other Bawks then be specially named, as to Aperies Merleonorum in boscis suis de Levesham.

A forester by Patent for his life is made Justice in Gire of the same forest hac vice, the forestership is become boto, for these offices be incompatible, because the Fozester is under the correction of the Justice in Gire, and he cannot judge himfelf : the fame law is of a Warden of a fogett and of a Justice in Cir of the fame forest: Though the offices of the Steward and Justice of the forest be both judiciall, pet whether he be Steward of the Swanimote, of of the Eire he is under the correction of the Inflice in Cire, and therefore incompatible.

We have been requested to set down what persons and what Officers either that then were, or which have been fince the last Cire, and how many forts of Officers, and what number doe belong to a forest, which we cannot better refolbe and latisfie, then by the Records of the Cires of lorefts, and specially by the writ of Summons of those Eires, which we have thought good to let down verbatim, not only for animer to the laid questions, but for divers other oblervations as we find it in the faid Eire of Dickering with the eract and particular return of the same.

Edwardus dei gratia Rex Anglia dominus Hibernia & dux Aquitania

Vic' Eborum Salutem. Summon' per bonos summonitores Archiepiscopos, E-

piscopos, Abbates, Priores, Comites, Barones, Milites, & omnes liber tenen-

Vic' Eborum. The persons that ought to appear before the Juftices in Ene of the Foreft,&c. Foresta Hen. Com.Lanc'. * Under thefe words are included the Conftable of the Caftle, the Warden, the Ranger, the Agifters, the Steward, the Bow-bea-* Four great learned men Ju-

tes, qui terras seu tenementa habent infra metas Foresta dilecti consanguinei & fidelis nostri Henrici Com' Lanc' de Pick. in Com' pradict', & de qualibet Vil ejusdem Com' infra metas ejusdem Forest' existen' quatuor homines & Prapositum & Forestar' Villarum, & * omnes alios, qui coram fusticiar' ad placita Foresta venire solent & debent, quod fint apud Pickering die Luna prox' post Fest Sancti Michaelis prox' futur' coram dilectis & fidelibus nostris * Ricardo de Willoughby, fo. de Shardelowe, Roberto de Hungerford, & Johanne de Hambury, tribus vel duobus corum quos ad requisitionem dicti consanguinei nostri constituimus Justic' ad itinerandum hac vice ad Placita Foresta ipsius Comitis in Com' pradict' à tempore quo Edmundus nuper Com' Lanc' pater pred' Henrici, cujus hares ipse est, Placita Fo-resta in eadem Foresta virtute* concessionis sibi per dominum E. nuper rege Anglia Avum nostrum inde fatt' ultimum' tenuit, auditur' & factur' pra-Forest. cap. 2. ceptum nostrum de hiis que ad placita pred' pertin'. Fac' etiam venire coram Forestat' Viridat'. Justic' predictis omnes Forestar', Viridat', & omnes illos qui fuer' Forestar' & Viridar' Forest pradict' in Com' pradict' post ultima placita pradict

flices in Eire of the Forest.

See Carede

cum omnibus attachiament' suis tam de Viridi quam Venatione qua post ult' Placita Foresta sunt emersa & nondum terminat' (viz.) tam de illis Attachiamentis que manent infra metas Foresta, quam de illis que manent extra Forest': Fac' etiam venire coram eisdem Justiciariis tribus vel duobus eorum Regardatores ipsius Comitis in baliva tua, Ita quod habeant ibi om- Regardatores. nia Regarda sua sigillis suis signat' & omnes Agistatores prafat' Com' in eadem balliva sua cum omnibus Attachiament'. Et habeas ibi Sum' & boc Bre-

ve. T. me ipso apud Westm' 17 die Augusti, Annoregni nostri 8.

Ad quod Breve Petrus de Saltmersh Vic' Eborum retornavit quod fecit plenum retornum istius brevis Hugoni de Nevil ballivo libertatis H. Comit' Lanc' Honor' de Pickering cui executio istius brevis restat faciend' qui sit respond' quod summon' fecit Archiepiscopos, Episcopos, Abbates, Priores, swer to all the Comites, Barones, Milites, & omnes libere tenen' qui terras & tenementa habent infra met Forest', & de qualibet Vill' ejusdem Com' infra metas guldem Forest existen' quatuor homines & Praposit' & Forestar Villar',& omnes alios qui coram Justiciar' ad placita venire solent & debent, quod fint apud Pickering ad diem in Brevi pradict' content' coram prafat' Justiciar' tribus vel duobus corum, auditur' & factur' pracept' domini regis de hiis que ad pradict placita pertinent. Et quod venire fecit Forestar, Viridar, & omnes illos qui fuer' Forestar', & Viridar' Forest' prad in balliva sua post ult' placita prad' cum omnibus Attachiamentis prad' tam de Viridi quam de Venatione que post ult placita Foresta sunt emersa & nondum terminat'. Et etiam quod Venire fac' coram eisdem Justic' tribus vel duobus corum Regardatores ipsius Comitis in balliva sua , ita quod haberent ibi omnia Regarda sua sigillis suis signat' & omnes Agistatores prafat' Comitis in eadem balliva sua cum omnibus agistamentis prout patet in schedula retorm suo pradicto attachiata.

To what end the Officers are lum-

Nota, the punctuall and dire & anpoints of thew it.

Forestar' de feodo in le Westward istius foresta de Pickering, viz.

Willielmus de Percehay Miles. Petronilla de Kynthorpe, & po. lo. suo Edmundum de Hastinges ad omnia faciend' qua Forestar' incumbunt durante Itinere isto, & fecit sacramentum.

Forestar' Custod' Foresta in le Rogerus de Leicester. Eastward, viz. Willielmus le Parker.

(Robertus Thurnefe. *Viridar' foresta de Rogerus Browne. Pickering, viz. \ Robertus Playce. Fo. de Kilwardbye.

(Willielmus de Everly. Rogerus le Longe. Regardatores | Fohannes Boye. Foresta de \ Johannes filius Alani. Galfridus de Kinthorp. Pickering. Thomas Thurnefe. Hugo de Nevill.

Rogerus de Alveston. Fohannes filius Galfridi. Rogerus de Stapleton. Rogerus Strutcocke. Radulphus de Colloughton. Fohannes de la Chemnie.

Nota, A woma that is a Forester in fee cannot execute the office her felf, but the may make a Deputy during the Eire, and her Deputy shall be Iwern, &c. ByCarta de Forefa cap 7. Tot Forestarii ponantur ad Forestas custodiend' quot ad illas custodiend' rationa'iliter viderint fufficere. * Viridarii 4.

Regardator' 13. By the statute de Carta de Foresta cap.7.there are to be 12.at the leaft, and, as here it appeareth, there may be more.

5/2

Agistatores

(Agistatores in le Westward istius Foresta | Fohannes Dringe.

Agistatores 4.

Agistatores in le Eastward istius Foresta Willielmus de Roston.

Nomina Forest' & Viridar' qui fuerunt. Nomina Forestar' nunc istius Foresta, & eorum qui fuerunt Forestar' istius Foresta, & eorum qui fuerunt Viridar' istius Foresta.

Alanus de Newton

Gapital' Forestar' Willielmi de Percehay unius

Fohannes de Wardesden.

Gapital' Forestar' Willielmi de Percehay unius

Fohannes de Wardesden.

Westward ibidem.

Henry de Ripley ? Capital' Forestar' Petronilla de Kinthorp alterius Fore-Thomas de Dalby S star' de feodo Foresta de Pickering.

David de Neuton ? Capit' Forestar' Hugon' de Teland For' Custodis For Thomas de Rippely ? resta in le Eastward.

Nomina Subforestariorum Foresta predict'.

Subforestarii 8.

(Fohannes de Harley.) Ricardus de Aleimaftes. Willielmus Gomen. Ricardus de Helmesley. Johannes Munmewe. Johannes Scot. Willielmus Courtman. Forestar' Radulphi de Hastings Custod' Foresta pradict' nunc.

Nomina Subforestar' qui fuer' in Foresta ista post ultimum Iter, &c.

Galfridus de Hawly. Robertus de Wigan. Petrus Lilly. Fohannes Rouceby. Rogerus fil' Nich. Alanus fil' Radi.

Adamus fil' Willielmi. Fohannes de Nevil. Thomas de Newton.

l'iridar.

W. .

Bernardus de Bergh, qui obiit, fuit Viridar in Foresta ista, & Alexander ae Bergh silius e us et hares venit & reddidit rotulos suos tam de viridi quam de venatione tangen Forestam istam de tempore pradicto.

The Law of the Forest is, that if a Acrderoz die, his heir is to bring in the Rols of his Auncestors time, which if he doe, then the Entry is at supra-

Adam de Bruis qui obiit fuit Viridar in Foresta pradict, & nullus est qui venit ad Rotul reddend, Ideo Vic seisiri fac omnia terras & tenementa qua fuer prad Ada quousque, &c. Postea venit Willielmus B. silius ejus & hares, & fecit sinem pro Rotulis pradictis, & admittitur per 40 s. prout patet in Rotul de extractis.

If the Terderoz alien his lands or die feifed, and no man bringeth in the Rols, then thall the land by the law of the Forest be feifed by the Sherif, which the Terderoz had untill the Rols be brought in, and if the Rols be lost, then till he make his fine and have his Ouster le main, and the Entry is, as is next

abobe.

Ricardus de Shelton, qui obiit, fuit Constabular' castr' prad. & custos istius Forest', & mullus est qui venit ad rotul' & munimenta ist' Forest' tangen' reddend', Ideo veniant ejus terr' & tenementa tenentes ad respondend', &c.

If the Warden of the Forest dye, and his hepre, at Wertenant bring not in the Rolls, schis beyze of Aertenant thalt and wer for the fame.

And here it is to be observed, that where the Front of Pickering has 26 Asi.p.60. appendant or belonging to the Caffle of Bickering, that be that is the Confable of the Caftle is ever by the Law of the Forest Chiefe Warden of that Forest. And so it is of the Forest of Windles belonging to Windles Castle. of the Forest of Rockingham belonging to the Castle of Rockingham, and all other forests belonging to Castles. And accordingly here you may observe that the office of Confiablethip and Wardenthip are in this Record componed one with the other.

Philippus de Monte Gomeri qui sequitar pro Domino Rege, petit vers' Radulphum Quintyn Ballivam custodia libera Haya Regis de Alxemas qua pertin' ad Serjantiam Regis Senefcall' Foresta Regis de Canoco, & qua ab eadem Serjantia alienata est sine affensu pradecessorum Regis Regum Anglia. Et Radulphus venit, & per licentiam reddit Domino Regi inde feifinam luam de.

Trin. 14 E. 1 in banco rot.7. Staff.

The outp of a Woodward both appears by his name, and by his oath, Normi- Cultos foresta. a. na funt notæ rerum.

Hil, 1 3 E. 3. It is thus reloited : Quilibet Woodwardus fecundum Affiam Forefix debet portare hatchettum, & non arcum & fagitras pro finifira fuspicione venationis deponend' ad prasentand' tam de viridi quam de venatione. Et videtur Justic'hic & Concilio Regis quod' Capreoli Anglice Roes, sunt bestiz de Warrenna & non de Foresta, eo quod fugant alas feras.

Hil.13 E.3. coram Rege Rot. 103.Eborum-8 E.3. Itin. Pick.

Bedellus is an Officer of the Fozelt, that both warme all the Courts of the Forest, and both execute the Proces of the Forest, and make all Proclamations as well within the Courts, as without; and is derived of the Saron wood Bydder, to call or warne, or of the French word in Aormandy Bedeau, a Batlitte or Apparator.

* Roe-bucks, Capreoli,

A Mafter of the Bame of the Forett.

16 E. 4. fo T. a.

Menfis vetitus, fence month, or Defence month, fo called, because it is the Cart de Foresta fawning month, when the Does have Fawnes, for the preferration whereof caps. they ought to be fenced, and defended from burt and disquiet. It contains the moneth containing 21. dayes, and beginneth in the fifteenth day before Midlone mer (that is, the Pativity of St. John Bapcist) in the beginning of which a Swanimote is to be holden, and endeth fifteene dages after. See the Statute of Carra de Foresta cap. 8. Inhereby it is enaued, quod rettium Swanimotum te-neatur in initio 15. dierum ante sestum Sancti Johannis Baptista, quando Agiflatores nostri conveniunt pro * faonatione seu feonatione bestfarum nostrarum,

This word faonatio or feonatio, is derived of the French word faonier, that is to fawne, or for Does to bring forth, ac.

* Sec Rot. Parl. 48 E. 1. fo. 2. pu. 37 the nuniforment of a Foreffer for doing traf-

paffe in the Fozeft. If the king og other Lord both pardon a trefpalle in a foreff, and the offender at a Justice feat by his learned Councell plead the fame; fir the proceeding thereupon the one observe two things. First, that by the law of the Forest, before any allowance thereof, the Justices charge the Ministers of the Fozest to enquire inhether the velinquent hath bone any trespalle in Wert of Menison after the date of the parbon. Secondly, when the pardon is allowed, then the entry is, Quod invenit manucaptores quod amodo non forisfac', i. non delinqueret ant peccaret. But if an offender be convided for trefpalle in the Forest in bunting, ec. and adjudged to be fined and imprisoned, which fine, though it be paid, pet thall he finde furcties for his good abearing, tc. tu thele words & Quod amodo fe bene geret, & in Foresta prædicta non forisfac, i. non delinqueret sen peccaret. Unde forisfactura pro delicto.

. By the absence or non venue of the Justices in Eyze at the day of the adjorn. ment, the Instice seat is discontinued, and how and by what meanes it may be reconti-

* The printed book is venatione, which ought to be amended, and made famatione or feanatione, which fignificth the fawning. aRot.Parl. 18 E. 1 fo.3.nu.37. b 8E.3.Itin.Pick Sir Raphe Haflings cafe. " This is the word of Carta de Foresta cap. 10.

elbidem Rob. Saltmerfhes cafe. dCarta de Forest cap. 10. e8E.3.Itin Pick. of William de Persay, and William de Kinthorp 7 R.z.cap. 3.

recontinued, and refummoned, it appeareth in 8 E.3. Itinere Pickering.

Bo Jury thall be compelled by any Difficer of the Foreft, or any other perfor inhatfoeper, to give their verbid in any other place, then where their charge is giben, against their good will, no; by malice, menace,o; other dures, thall be con: Arained to albe their verdia of a trespalle in the Fozett, otherwise then their confeience will clearly informe them. This Law ertendeth to Forests only.

Albeit there be fome beatts that be no beatts of Fozett, as the Buck, sc. and fome Beaks and Fowles that be no Beaks and Fowles of Warren, pet if any man bunt or hawke at them within the Forest, it is against the Astife of the for reft, and punishable by the Lawes of the Forest, for all manner of hunting or bawking there without warrant is unlawfull, because it disquieteth the Beatts of the Fozett.

The reade that Bing H. 1. by his Charter granted, Quod Cives Londonia habeant fugationes suas ad fugandum sieut melius, & plenius habuerunt * antecessores eorum, seilicet Siltre, & Middlesex & Suer.

The King being feifed of a Forest, did grant the Forest to another in fee, the grantee thall have no forest, because he hath no power to make Justices and Officers of Forest to hold Courts, sc. but pet though it cannot take effect ex vi termini, as a foreft, pet together with the Bame the same thall passe as a free Chale for the Savages and Conies ; for as hath been faid every Forest is a free Chase, & quiddam amplius.

Chafea eft ad communem legem, and is not to be guided by the Forest Laws,

and fo are Darks.

But if the King doth grant a Forest to a Subject, and granteth further that upon request made in the Chancery, he and his beires thall have Justices of the Forest, then the Subject hath a Forest in Law, as the Duke of Lancaster had the Forest of Pickering and Lancaster, and the Abbot of Whitbre had the Forest of Whitbps in the County of Bork, which being not understood, hath been the cause that Readers and others have erred. Vide 12 H.7. Kelw. 13.8 14. &c. 4 E. 3.55. Malins case. 2 H. 6,15. Forest de Exmore. 27 H. 8, cap. 7. 1 E. 3. cap. 2.

22 E.4.cap.7. 32 H.8.cap. 13. Ricardus de Cornubia & 9. alii attach. fuerunt ad respondend' Johanni

de Sallaye quare ipsum ceperunt, & in prisona detinuerunt per decem septi-

manas apud Castrum de Knaresburgh, &c. Ricardus & alii dicunt quod Ca-

frum & Honor de Knaresburgh cum Foresta de Bestayne fuit aliquando in seisina Domini H. Regis, patris Domini Regis nunc, & co tempore fuit talis consuetudo in Foresta pradicta, quod si quis indictatus fuerit per Forestarios coram Seneschallo ejus dem Honoris de transgressione de venatione facta in eadem Foresta, idem Seneschallus tales transgressores ubicunque fuerint invents infra eandem libertatem pradicti Honoris, licite potest arrestare & imprisonare, & eos in prisona detinere quousque satisfecerint de transgresiane, &c. Qui Rex Hen dedit pradict' Honorem cum Foresta, &c. Ricardo fratri suo Com' Cornub' patri Edmundi Com' Cornub' qui toto tempore suo usus est tali Johannes è contra dicit, nullam talem fuisse conlibertate arrestandi, &c. Nota, capti cum suetudinem arrestandi malefactores, nisi quando capti fuerunt cum manuopere, & hoc ab antiquiore tempore, quia idem Comes non habet ibidem Forestam, sed Chaceam tantum. Et quod tempore Willielmi de Stotevill Domini dicta Chacea qui dedit Regi f. dictam Chaceam, & tempore dicti Regis f. & tempore Regis H. patris, dum di cta Chacea fuit in manu sua, nunquam arrestaverunt aliquos de transgrecione in Chacea illa, nisi illos qui capti fuerunt cum manuopere, & hoc offert verificare per patriam, &c. Ricardus dicit quod

non possunt pradictam verificationem sine pradicto Com' verificare. Ideo prac' est vic' quod sum' pradict' Com', &c. Consimile placitum & consi-

inilis responsio in eodem Rotulo. Item al' in Rot. 163.

Carta Regis H.1 civibus London'.
* Nota, the Citizens of London had this priviledge before this Charter. 42 E.3.2.2.in Trans.

Regift.8.b.

See the fir ft part of the Institutes, Sect. 1. verb. Tres ou tents.

Mich. 18 E. 1.in Banco Rot. 155. Eborum.

By the grant of a Forest a Chase paffeth.

manuo per c.

Bing R.2. granted to Thomas Duke of Bloucefter in Speciall taile, the Caffle Rot. Parl. 14 R.2. of Saint Brionel, and the Forest of Deane, (whereby nothing passed, as hath nu.13. been faid, but a Frank Chafe) now by authority of Parliament it is enaced, that the faid Duke thould hold the faid forest as a forest, and to constitute fuch Juffices and Dfficers, tc. as belong to a foreft.

But what was the title of the Courts of Eppe of Forests in the hands of fubleds ? Was antwer, taking one example of the Forest of Dickering in the bands of Henry Carle of Lancaster; Placita Foresta Henrici Comitis Lane' de Pickering tent'apud Pickering coram Ricardo de Willowby, Jo.de Shardelowe, Roberto de Hungerford, & Johanne de Hanbury, Justiciariis ad irinerand' hac vice, ad placita Foresta pradicta in Com' Eborum assignat' die Luna prox' post feflum Sancti Michaelis, Anno regni Regis E. 3. post Conquestum 8.

If any felony be committed within the Fozet, it thall be inquired of befoze the 128.3. coron. 119. Judges of the Common Law, and both not belong to the conulance of the Chiefe Felonia. Justice of the Fozest.

Mich. 9 E. 1. coram Rege Rot. 6. Huntingdon, Transgressio in foresta Regis Tiansgressio.

pro Venatione Regis non est hic terminanda.

Nora, Before Scroope and other Buftices in Cire, according to the course of V. Caria de Fothe Common Law, a man claimed to be quit of pawnage in the Kings Forest, and also be claimed in the same forest pawnage of his tenant pur agistes; and for that this belonged to the Justices of the Forest, they would not meddle with it. And the reason of that is, the woods of the Statute of Carra de Foresta, cap. 16. Præfententur capitalibus Jufficiariis nostris de foresta, cum in partes illas venerint, & coram eis terminentur. So as the termination and ending thereof belongeth to the Thiefe Justices of the Forest, by the expresse words of the Statute. And where the Statute faith, Coram capitalibus Jufticiariis noftris, &c. It is to be knowne, that there is but one Thiefe Justice of the Ferens on this fibe Trent, and be is named Jufticiarius itinerans forestarum, &c.citra Trentam, And there is another Capitalis Justiciarius, and he is Justiciarius Itinerans omnium forestarum, &c. ultra Trentam; who commonly is a man of greater dignito then knowledge in the Lawes of the Fozelt. And therefoze when Justice feats are to be holden, there be affociated to him fuch as the king thall appoint, who together with him thall determine omnia placita, &c. forefla, with a Datent of Si non omnes, and a Wirit De admittendo, &c. And the Chiefe Juffice of the Fozest, and these associates, are Capitales Justiciarii foresta, and nas med Capitales in respect of the Merderogs and others, that to some purposes (as bath been faid) have inferioz judiciall places.

And feeing, as it bath before appeared, the Forest Laws differ in many cafes from the common Laws of England, it is good reason thep should be determined before men learned in the Lawes of the Forett, as in other cases. As if a trespasse bedone either in Wert of Menison in any Forest in the hands of a subject, in the life of the anceltoz, Lozd of the Forest, it shall be punished in the life of the heire. But so it is not in the Chases of Parkes of a subject, for by the Common law

Actio personalis moritur cum persona.

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If a man committed a trespatte in a Forest, and dre, by the Forest law the tres. 8 E. 3. Itin. Dick.

palle is dispunishable, agreeable to the rule of the Common law.

But by the Statute of 19 H.7. be that thall stalk with any buth or beast in any Barke, Chase, or Forest, without licence, ac. Chall forfeit for every time be so falketh r. li, to any person that will sue so, the same by action of debt, wherein no wager of law, protection, or essoine thall be allowed, and two Justices of Peace may examine the same, tc. See the Statute of 1 H.7.cap.7. See the third part of the Institutes, cap. Felony.

If a Forestership or a Bailiwick of a Forest be granted in fee, if it be found out at an Gire for the Forest, that the grantee bath milbone in his Bailiwicke, the Bailiwick is forfeited. Nora, the Justices in Eire have power to enquire thereof. In thefe offices of Forefterthips or Bailiwicks in fee within a foreft, albeit they have an absolute see simple therein, yet are they of such trust, that

reftacap.16. Temps E.z. Kelw. 150.b. V.21 H.7.12-&

For thefe affociations and other Writs, fee a notable prefident 8 E.z. Itin, Pickering in the cafe of William of Perfay,&c. fol. 165.

Hugh Latimers calc. 19 H.7.cap.11. In this Act fee the great penalty for keeping of Nets called Deer hayes and Buck stals by any that hath not any Forest, Park, or Chife. 26 All.p.60.

Register 10.157. F.N.B. 216.

For the beafts of • Chafe and Warren, and Fow's of Warren being not proper to this Treatife, fee the first part of the Inst. Sect. 378 Rot. Parl. 18 E. 1. nu. 20.

* Lutra animal amphibium.

they cannot be granted over without the Bings license, and before such license be granted, there goeth out a Writ of Ad quod damnum to the Bing, if such license thall be, ec.

There be many beaus of the forest by the laws of the forests of England. The Hart in Summer, the Hinde in Ainter, and all that proceed as of them: the Buck in Summer, the Doa in Winter, and the proceed of them: the Hare male and female, and their proceed: the wilde Boar male and female, and their proceed: and the Aolf male and female and their proceed: the Formale and female, and their proceed, the Hoe, as it appeared before, is no beast of the forest, but it is a beast of Chase.

But I find that in 18 E. 1. John de Claret was amerced in 100 li, pro uno cervo & duobus 'lutris captis in foresta de Pek, and he petitioned to the hing in Parliament to be discharged thereof and was denied. Det I take an Otter is no beast of the forest: but all hunting in the forest, as hath bin said, is unlawfull.

The proceeds of the Part and Pinde. The Pale the first year a Calf, the second a Broket, the third a Spayad, the sourth a Staggard, the fifth a Stag, the sirth a Part, and so after. The semale, the first year a Talf, the second year, a Brockets lister, the third year a Pinde.

The proceeds of the Buck and Doe. The first year a Fairn, the second year a Pricket, the third a Sozell, the fourth a Soze, the fifth a Buck of the first head, the sirth a great Buck.

The proceeds of the Pare, the first year a Leveret, the second a Pare, the third a great Pare. De a Wilde Boar: a Pig, a Pogge, a Pog-stear, a Boar, and after a Sanglier.

The seasons by the law of the Forest so, the Beasts of the sorest are these. Of the Part and the Buck, beginneth at the seast of So. John Bapcist, and endeth at Holy Rood day. Of the Pinde and Doa, beginneth at Holyrood and continueth till Candlemasse. Of the For at Christmasse, a continueth till the 25 of Harch. Of the Pare, at Hickards, and lasteth till Pidsummer. Of the Bore, from Christmasse till Candlemasse.

In the statute of Carra de foresta in divers places Venatio signisseth Aenison in French Venaison, and so in effect in Duch and other languages. It is called Aenison of Venaison, of the mean whereby the beats are taken, quoniamiex venatione capiuntur, and being hunted are most wholesome. A They are called beats of Menary (not Menery as some term it) because they are gotten by hunting, No beast of the forest that is solivagu a nocivu is ventson, as the For, the Wolf, the Partin, because they be no meat, but caro coru est nociva: A fortiori, the Bear is no Menison not only because he is Animal solivagu & nocivu, but because he is no beast of the sorest, a whatsoever is ventson must be a beast of the sorest, sed non èconverso. On the other side, Animalia gregalia non sunt nociva, as the 'wilde Boar; so naturally the first three years he is Animal gregale, and after trusting to his own strength, and so, the pleasure of man becometh solivagum. He is then called Sanglier, because he is singularis, but he is Mentson and to be eaten. The Hare is Mentson also, which the Poet preferreth before all others,

Inter quadrupedes gloria prima Lepus.

So as the Red-deer, the Fallow-deer, the wilde Boar, and the Hare, are verniton. Whereupon these two conclusions in the law of the forest do follow. First whatsoever beast of the sozest is sor the food of man is vention, and therewith agreeth Virgil, describing a feast.

Implement veteris bacchi pinguisq; ferina.

They had their belly full of old wine and fat Aenison. So Aenison was the

principall dith of the featt.

2. Whatsoever beast of the sozest is not so, food of man is no vention. Therefore Capreolus being no beast of the sozest, as hath been said, is not by the law of the forest Uenison, so, though it be sood and taken by hunting, it is no Uenison. Pature hath endued the beasts of the sozest which are Tenison with two qualities, swiftnesse, and seare, and their sear increases their swiftnesse.

Cart, de foresta, ca.8.10.16.&c.
And so it istaken i Reg.ca 4.vcr.21
Venatio Cervorū, the venison of Harts.
a Oidinatio soresta ca.1.5.
Aristotle,

Aristotle.
* Sanglier, quia fingularis.

Martial.

Deer à DipGrace, i. fera bellua nat' egoxiv, and thir flesh is called Caro Ferina.

Pedibus

-Pedibus timor addidit alas: but pet the Deer are the mott fearefull.

Dente tuetur aper, defendunt cornua taurum, Imbelles Damæ quid nifi præda fumus?

Having spoken somewhat de Venatione, it followeth that we thould say foinctuhat de Viridi, tecause the Statute saith , Tam de Viridi quam de Vena-

tione and other Statutes fpeak of Mert and Menifon.

Viridis, Green hue, a viridicate, the French calleth it Aerd, we Wert, whatfoever beareth green leaf, but specially of great and thick coverts. And Wert is of divers kinds, some that beareth fruit that may ferbe as well for food of a men as of bealts, as Pear trees, Chefnut trees, Apple trees, Service trees, Aut trees, Crab trees, tc. and for the thelter and befence of the Bame : fome called b Hautboys, serving to food and browle of and for the Game, and for the defence of them, as Daks, Beeches, tc. Some Hant-boys, for browle and thelter and befence only, as Athes, Poples, tc. Df Sub-boys some for browle and food of the Game, and for thelter and befence, as Paples, tc. fome for browle, and befence, as Birch, Sallow, Willow, ac. fome for thelter and defence only, as Alber, Cl. der, tc. De buthes and other begetables, fome for food and thelter, as the Hatothorn, Blackthorn, tc. some for hiding and thelter, as Brakes, Borffe, Death, tc. To fum up all, Plantarum tria funt genera: Arbores, Arborescentes, & Herba, Arbores, as Haut-boys, & Sub-boys, Arborescentes, as Buthes, 182akes, tt. Herbe, as Herbs and Wiceds, which albeit they be green, get our legall Viridis ertendeth not to them.

A Viridi commeth, as hath been faid, Viridarii, because their office is to see to the preferbation of Aert, which in troth is the preferbation of Aenison. The

Poet speaking to the trees, saith,

Quercus es in sylvis pulcherrima, Pinus in hortis, Populus in fluviis, Abies in montibus altis.

See for the punishment of trespasse done de Viridi, either in the kings woods, of in the woods of the Subject, Confuet' & Affis' Foreft', ubi fupra.

The Philosophicall Poet in describing the most delightfull pleasures of

woods, ic. and Green bue, faith,

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Te. ous Devenere locos latos, & amana vireta Fortunatorum nemorum sedesque beatas.

And because it should be hard and difficult that any man should hunt and kill the kings Deer in his fozelt and palle away without discovery, unless there were Procurers, Plotters, Alifers, and Receivers: By the law of the forest, whosoever receiveth within the fozest any such Palesadoz either in hunting oz killing, knowing him to be such a Halefactor, or any flesh of the Kings Mentson knowing it to be the kings; in this case be is a principall trespatter, wherein the law of the forest differeth from the Common law, for by the Common law be that receiveth a trespance and agreeth to a trespance after it be done, is no trespaller, unlest the trespalle was done to his use, or for his benefit, and then his agreement subsequent amounteth to a commandment, for in that case, Omnis racihabitio retrotrahitur & mandato aquiparatur, but by the law of the forest fuch a Receiver is a principall Arespaller, though the trespalle was not done to his ule, as well as the Procurers and Plotters; but by the Common law in case of felony such a Receiver is but an Accessary. But in the case abovesaid, if the recelpt be out of the forest, he cannot be punished by the law of the forest, because it is out of the jurisdiction of the forest, which jurisdiction is locall. And feeing the jurisdiction of the forest is locall, the law of the forest bath provided, that the forest should be inclosed by metes and bounds, which indeed are the inclosure of the forest: for as Parks are inclosed with wall, pale or hedges, so forests and thales are inclosed by metes and bounds, and as a Parke cannot be a Parke without such an inclosure in deed as is aforesald, so it can be neither sozest nor

Martial.

De viridi, vireru virectum,&c. Cart de Forest. cap.8.16. 1 E.3.ca.8. *Confuct.& Affifa de Foreft. 6 E.I. cap. 1. 20,21. Hil. 13 B.3. Cora Rege Rot. 103. Virgil.Itur in antiquam fylvam ftabula alta feraa Deut. 20. v. 19. b Consuct. & Affifa Forest.6 E. I.C.

Virgil,

¶ Of Principall and Accessary. 8 E.3.Itin. Pick. to.3.&5.

12 E.4.9. 15 E.4. 15.b.14 H.6.26, 27. 37 Aff. 8. 38 Aff.6.38 E.3. 18.13 H.7.12,13. Nota, that in the highest and loweft offences, viz. High treason and treipaffe there are no Accessa. ries, but in felony which is between both, there be Acceffaries both before and after. See the 3. part of the Instir, Cap. Principall & Acceffary.

chafe without an inclosure in law, that is, by metes, and bounds. Meta funt clausura Forestarum & Chacearum : and Foresta est locus in quo fera includuntur, venandi ergô, folis metis. And where by the fratute of 6E. 1. cap,18, it is provided, quod omnes meta foresta fint integra domino regi, that is so to be underfrood, quoad jurisdictionem & imperium, & non quoad dominium : for if Ribers of High ways be bounds, as most commonly they be, get the King bath no more interest in the Soil, Way, River, or Filbing, then of right be ought, but only for his jurisdiction of his forest which extendeth over the whole Wap, River, tc. And where Wils and other houses, trees, tc. of other men, and fuch like, be metes and bounds of the foretts, pet thereby the king hath no inter rest in such Wils, houses, or trees, ac. And therefore old Woodmen have divided metes, quoad jurifdictionem & imperium, into metes inclusive, as Waps, Ri vers.ac. and into metes exclusive, as Thurches, Thurch-pards, Thappels, Wils, Bonfes, Trees, tc. which bound the forest, but are excluded from any jurisdiate on: and that the laid law of 6 E. 1. is intended only of metes inclusive, if any man kill or bunt any of the Kings Deer in any part of the River, High way, to. being an inclusive bumbary of the forest, he is as great an offender, as if he had killed or hunted within the main continent of the forest, albeit the state and in terest of the foil of the Digh-way of River be in other men; but neither of these kind of metes and bounds are removeable, because they are the inclosure of the kings forest, and if either of them be removed, it is punishable by the lains of the forest. This word mera is only used in this statute: In ancient perambulation ons and records pou thall read fecundum meras, maras, bundas, & * marchias foresta. Mara is setched from the Saron word mere, and that of peigo Grace, which fignifieth to divide or bound. Bunda a bound, is derived from the Saron wood Bunna, fignifying a higher thing, as Hils, Houles, Trees, ec. Marchia is derived from the Saron wood March, now a mark. Sed meta accipitur pro quocunque termino, limite, seu fine.

"8 E.3 Itin'Pick. fo.6. Mara. Bunda. Marchia. Meta.

Virgil. Regist. Judic. 35,36. Dier 16 El.316, 327.

Perambulations of Forests according to the ancient metes and bounds. Vid. Sup. pa.302.

Rot.Par.Anno 9 H.4.nu 40.

The good old laws of the forest to be observed.

His ego nee metas rerum, nec tempora pono,

And it is to be observed, that a man may have a free Chase as belonging to his mannoz in his own Woods, as well as a Warren oz Park in his own grounds; for the Chale, Warren and Park are collaterall inheritances, and not issuing out of the foil, as the Common both, and therefore if a man hath a Chale in other mens grounds, and after purchafe the grounds, the Chafe remaineth.

After Caffer following the Parliament holden in Febquary, Anno 9 H. 3. according to the statute of Carta de foresta, Hugh de Nevill, and Brian de Liste were appointed Commissioners to take Inquisitions of the ancient metes and bounds of fuch forests, as either H.2. or any thing after had inlarged. And in the reign of H. 3. ofvers Perambulations, and Deafforestations were made, and many other in the reigns of H.3. E. 1. E. 2. and E.3. et. All which were returned into the Chancery, and remain of record in the Tower.

The Commons of Herefordhire pray remedy against the evill customes of the fozest of Elopastone; namely, for taking their Cattel comming theres unto as forfeit. Thereunto the royall antiver of the King in Parliament was in these words, The old good laws and customes of the forest to be observed, and the contrary forbidden by a writ under the Privy Seal, Regalis sane & digna Plantaginestorum genere sententia, wherewith we will conclude, that new opinions of new Authors, or fingle opinions of Readers not grounded upon the Authorities of our Books or Judiciall Presidents, are not to be allowed, but the laws both good and old, and specially the Statute of Carra de foresta, and other Statutes, and the resolution of the Judges thereupon are to be duly obferbed. See also the old and just Articles of the Charge in Flera lib.2. cap.35. Nota, the Charge and reject all new inventions without warrant of law.

and Articles inquirable by the good old law of the Forest, which is worthy to be advisedly read and followed. Vid. Lib. 2 fo.80. Lib. 137,138. Lib.g. 49,50.

II 100

Two of the principall and ancient Articles, the one concerning Menifon, and the other concerning Mert, be, firft, that the chief forefter at the Juftice feat ought to answer for all manner of Tenison delivered by warrant, or otherwise, in this manner: The Twelve Jurous ought to present before the Justices in Gire the number of Deer that have been killed fince the laft Gire, and then the chief Fozester is to answer by what warrant the same were killed, and fach warrants as are lawfull ought to be allowed, and fach as te unlawfull are to be difallowed. Secondly, the Twelve Juross thall prefent what Dkes, Trees, and other woods have been felled and delivered out of the forest by the Difficers of the fame, and they to answer and thew by what warrants the same were done; whereupon it will appear whether the warrants be fufficient or no, the truth whereof thall be inquired by the Forefters, Merderers, and Regars Vide Register. pers. But thefe or any other Dinifter of the forest are not to be returned of any Jury out of the forest.

The Lams of the forests of England are certain, and established by Autho: rity of Warliament, and not, as in other Countries, changeable and floting in un=

certainty, ad principis placitum.

For the Antiquity of such forests within England as we have treated of, the best and furest argument thereof, is, that the forests in England (being in number 69.) ercept the new forest in Hamsbirg creded by William the Conque roz, as a Conqueroz, and Hampton Court forest by H. 8. by Authority of Barliament, are so ancient as no Record or History both make any mention of any

of their creations of beginnings.

Dur Ancettogs the Sarons called a forett * Buckholt, i.fylva ferina or cervina; We bare not fetch our kind of foreft, as fome do, from the holy Hifto. rp of Scripture, for therein we find no fuch forefts as we have. And it is worthe of observation that in the Custumary of Popmandy Cap. 10, fo. 17. b. Le seneschal au Prince visiteit les forests & hayes du Prince & ronoquoit les forfeirs,&c. So as we fetch not our Chief Justice of the forest from Pormandy. where the Kings Steward was the Chief Judge of the forest.

And as forests are of great Antiquity, fo the care and charge of them was in England always committed to great and bonourable Personages, and the like

was also in forain Pations.

Si canimus fylvas, fylvæ funt Confule dignæ.

For of ancient time the Confuls of Rome had the government of the forefts, sc. 15ut take Sucronius as he is, Ab optimatibus daram scribic operam pr Provincia futuris Confulibus minimi negotii, i. sylva collesi decernerentur: foz to fay the truth, Recreations should not be used as Professions, and Trades, but to be used as Medicines, to make men more able and fit for higher and greater affairs, and therefore they are called Recreations, because they newly create spirits, tanquam instaurationes spirituum : but pet these pleasures are accounted inter res minimi negotii. Nonnulli principes immoderato venatus fies. studio ita correpti, & corrupti sunt, ut ei omnia posthabeant magno dedecore, & ingenti aliorum damno.

Hac bis bina, canes & aves, servi arque caballi, Dicantur dominos fape vorare fuos.

And to lay the truth, the Bunter litteth on a Beaft, he is compatied about with Beatts, and hunteth and chafeth Beatts, and therefore not to be used daily as a Trade. And it was justly provided by the Tenth Chapter of this Charter of the forest, Quod nullus de catero amittat vita pro venatione noftra, &c. Hereof John Salisbury Speaking of hunting and Hunters laith, In cantum hujus vanitatis instinctu erupere, ut hostes naturæ fierent condicionis suæ immemores, divini judicii contemptores , dum in vindictam ferarum imaginem dei exquifitis judiciis subjugarent; nec veriti sunt hominem pro bestiola perdere repealed 1 E.6. quem Unigenitus dei redemit sanguine suo,

S E. J. Itin Pi k. fo.112,113.

F.N.B. 107.2. 34 E.1. The commenda tion of the Forest Laws of England. The Antiquity of Forests. The number of the Forests is 69. with the Forest of Hampton Court. Halt Saxonice, Sylva Latine. Levit. 17.13. 4 Reg.cap.2. Pfal. 50, 10. Pfal. 80.14. 104.19. 4 Eldi. 5. 15. Jer.5.6. Ezech.31.6.

Virgil.

Suctionius in Cxfare. Vid Flera lib.2. cap.35.De vere. ribis Capit' Foreitie. Voluptates commendat ratior u -

Johannes Sarum lib. 1. de nugis Curialium, c.4. Vid. 31 H.S.c. 12. qued cite evanuit : cap. 12. 1 Mare Thus cap 1.

Duo che i filma mundi lum na, Authoricas & Racio.

Manwood fe ...

Thus have we wandled in the wildernelle of the Laws of the Forest: Wherin we have diffented from others, we have produced our Authorities, and thewen our Reasons, the two maine lights and guides, which herein we have followed. The have faithfully published divers resolutions of the Judges concerning fo. reffs and forest Laives, where with we were well acquainted, which are the fafest grounds to build upon. Many things which are evident by the Wert of Car. ta de Foreffa, and other Statutes concerning Foreffs, we have not fo much as touched, but left the fame to the judicious Reader, whom we advise to beware to give credit to our new Authors, either bouching of Aas of Parliament, Booke Cales, or Judgements in Cire, tc. for we have found many of them miffaken. bouched without warrant, or not understood, which the judicious Reader will from finde: not to Carta de Foresta of Bing Canutus granted (as it is published in print) at a Parliament holden at Winchefter, Anno Domini 1016. Wie confelle that in that yeare, which was the first yeare of his reigne, he held a parliament at Wainchefter, and made divers Lawes as well for the honour and wor. thip of Almighty God, as for the good government of his people. which he pub. lithed in the Saron Tongue, (neither doe we reade that he ever published any Law to: England in the Danish tongue, as they affirme he did this In all these Lawes he never maketh mention of this Carra de Forefta, or of any thefe suppos fed Laives of the Fozelt therein contained, which he had just occasion to doe; for amongst his other lawes at the same Parliament, he maketh this Law the 77. Chapter in the Saron Tongue, which is thus translated into Latine: Pracerea autem concedo ut in propri siphus prædiis quisque tam in agris quam in sylvisexcitet agiterque, feras autem meas ne venetur cum porna pracipio. Row in the Supposed Carra de Foresta of Ming Canutus, in the 30. Chapter, it is thus contain ned: Volo ut omnis liber homo pro libito suo habeat Venerem seu Viridem in planis suis, sine Chasea tamen: & devitent omnes meam ubicunque eam habere volucro. Which we hold greatly to differ from the true Law before rehearled in two respects. First, that the true Law extended to Woods as we las to Plains, and this to Plaines only. Secondly, by that they might hunt, ac. by this they cannot; therefore we leave that Carra de Foresta of Iting Canutus as justly sufpeace, till we receive better proofe of them: whatfoever it be, it is of little use, for so many of the Thapters therein as be contrary to, or differing either from our Magna Carra de Forefla, og any other Act of Warliament, are certainly of no force.

Thus have we as briefly as we could, treated of the Courts of the Forest, and incidently of such Forest Laives as now stand in force; wherein (as the subious Reader may well perceive) we have respected matter more then method. See Carta de Foresta Anno 9 H.3. & Cart. 17. Regis Johannis, Match, Parpag. 264.

CAP. LXXIV.

Of Ecclefiasticall Courts, anciently called Halimots, (i. Holy Courts) Circgemots, or Chircgemots.

Here some may doubt, how we that profess the Common Law should write of Occlesiasticall Courts, which proceed not by the rules of the Common Lawes. To this we answer by good authough in our Bookes, that the Bings Lawes of this Realme do bound the jurisdiction of Ecclefiafticall Courts, and that the King is well apprifed of all bis Judges which he hath within his Realme, as well spirituall as tempozall, as Archbithops, Bithops, and their Officers, Deanes, and other Binifters, which have b spiritual jurisdiction. And that the Popes Collector or Minister (so say

our ancient Books) bad no jurisdiction within the Realme.

And it is declared by the Bing, the Lords Spiritual and Temporall, and the Commons in ful Parliament, That the piritualty (now being usually called the English Thurch) alwayes bath teen reputed, and also found of that fort, that both fo; knowledge, integrity and fufficiency of number it hath been always thought, and is also at this houre sufficient and meet of it selfe, without the intermedling of any exterior person or persons, to declare and determine of such doubts, and to administer all such offices and duties as to their rooms spiritual both appertain: for the due administration whereof, and to keep them from corruption and lini. fter affection, the Kings most noble Progenitors, and the antecestors of the Bobles of this Realme have sufficiently endowed the said Thurch both with honour and pollettions. And the Lawes Temporall for triall of property of lands and goods, and for the confervation of the people of this Realme in unity and peace, without rapine or spoile, was and pet is administred, adjudged, and erecuted by funday Judges and Ministers of the other part of the faid body politique, called the Tempozalty: and both their authorities and jurisdictions do conjorne together in the due administration of Justice, the one to help the other.

Of what things the Clergy bath spirituall jurisdiction, is evident in our Books, and particularly in Cawdries Cafe, whereof there is no question. And certain it is, that this kingdome bath been best governed, and peace and quiet preferbed, when both parties, that is, when the Justices of the Temporall Courts, and the Ecclefiatticall Judges have kept themselves within their proper jurisdiaion, without increaching or ulurping one upon another; and where luch incroachments or usurpations have been made, they have been the seeds of great trouble and inconvenience; for preventing and avoiding whereof, we have com-

poled this Treatile of the Eccleliastical Courts of the Realm.

The Adversary hath made divers objections against our Archbishops and Bilhops made about the beginning of the reign of Queene Elizabeth, and by confequent against the Bishops ever fince. First, that they were never confecrated according to the Law, because they had not three Bishops at the least at their Confecration, nay never a Bilhop at all, as was pretended; because they being Bithops in the reigne of E.6. were depaived in the reigne of Queen Mary, and were not (as was pretended) restored before their presence at the Confecration. These pretences being (in troth) but meer caville, tending to the scandall of the Clergy (being one of the greatest States of the Realm, as it is faid in the Statute of 8 Eliz .cap.1.) are fully answered by the said Statute, and probision 8 Eliz cap. 1. made by authority of that Parliament for the establishing of the Archbishops

2 H.4.9. Rot.clauf.4 H 4. m. 11.optime. Rot.chauf. 11 E.2. Dorf. aNcta, the Kings Judges. 6Spirituall jurifdiction. 625 H.8.cap. 21.

" If fo,then much more at this day. See before pag.

d The Spirituall jurisdiction.

The Temporall jurisdiction.

Of what things they have jurifdiction. Articuli Cleri per totum, lib.s.fe. 1. Camdryes cafe.

See before cap. of the Chancery, the Articles against Cardinall Bolfey Art. 1.13. 14.17.18.19.21. 24.25.29 30. Bract.lib. 5.cap. 2. &c. Brittonfo. 10 b. Rot.Parl.15 E. 3. eSee Dier. Mich. 6 & 7 Eliz.

Parker in libro de antiquitate Britannice Ecclefie. Inbritulo Mattheus. Imprinted 1572. 13 El z.

and Bilhops both in prafenti and in futuro, in their Bilhoppicks. Df this Statute Arch'ifhop Parker in bis 1500k De antiquitate Britannica Ecclefia fpenk. ing of himfelf faith, Anno Domini 1559. Cantuar' Episcopus electus està Decano & capitulo Ecelesia Metropolitica Cantuar': posteaq; codem Anno 17 Decembris adhibitis quatuor Episcopis, &c. lege quadam de hac re lata, requisitus confecratuseft. Another objection was made against our Archbishops and Bishops, to; that the Commission (being never inrolled) whereby the Bishops made in Queen Maries time were depathed before the fourth year of the reign of Queen Elizabeth: 02 the IR ecord of the approbation of them cannot be found: 4 therefore it was pretended that the Archbithops and Bithops made by Queen Elizabeth, libing the former, thould be no lawfull Bithops. But by the Statute of 39 Eliz. cap. 8. the Archbilhops and Bilhops are adjudged lawfull, as by the faid Act ap. peareth. And by thete two Statutes, these and all other objections against our Bishops are answered, which we have thought good to remember, feeing we art to treat of their jurifolation, ut obstruatur os iniqua loquentium,

39 Eliz. cap.8.

or Of the Court of Convocation.

The Name. F.N.B.269.B. Register. to. See the first pirt of the Institutes Sca.133. 23 H.8. cap. t. 32 H.8.cap. \$3. Anciently called Church gemote. Int. leges Hen. 1. cap.8. Quofqie Churchgemot discordantes invenier, vel amore congreger, vel sequestret judicio. * 21 E.4.45,46.

It is called the Convocation of the Clergy. In England there being two Provinces, the one of Canterbury, and the other of Pork, the Bilhops and Suffragans belonging to Dork, are the Bilhops of Dureime, Carlifle, Cheffer, and the Alle of Man, and all the rest of the Bishops are within the Province of Canterburp.

In domo Convocationis the tobole Tlergy of either Probince are either prefent in person, or by representation: * but these Provinces and they only fit in the Parliament time, and this conflict of two parts, viz. the Apper boule, where the Archbilhops and Bilhops lit, and the Lower bonse where the rest do sit.

Reda. The antiquity beld a great Synod.

Anno Domini 686 Augustine assembled in councell the Britain Bishops, and

Newbirgh lib. z.cap 13. Brad. lib. 3. fo. 123, 124. 6 H.3. Hol. 203. Rot. Parl, 18 E.3. nu. 1. Rot. Parl. 2 H.4. nu. 29. F.N.B. 269.8 H.6. cap.1.

■ By what authorsty affensbled. 13 E.3.Rot.

The Clergie was never allembled of called together at a Convocation but by the laings * Wirtt, adjuroria Regis, as Beda fatth ubi fupra, Vid. Parl. 18E. 3. nu. 1. Int' leges Ing Anno Domini 727, a Convocation of the Clerapcalled Magna servorum Dei frequentia. Parl-16.24. Dorf.clauf. 17 E 2.m. 30.31. 15 H 8.cap.19.

What their juri diction

was.

Merton cap.g. 21 E.4.45.1. per Vavafor. & b.per Str key, Brown & Vavafor. 20 H 6.13.

Their jurisdiction was to deal with Herefies, Schismes, and other meer Splrituall and @cclefiafticall caufes, and therein they did proceed juxca legem divinam & Canones landa Ecclefia. a And as they could never affemble together of themselves, but were alwayes called together * by the laings Warit, so were they often times commanded by the Bings Witt to deal with nothing that concerned the Kings laws of the land, his Crown and bignity, his Perion, or his State, or the fate of his Councell or Ringdome : as to illustrate this matter to remember one or two eramples.

34 H. 6. 39. 28 H. 6. 11. Regift. fol. F.N.B. 269. a De procurat. Cler. See in the Chapter of the High Court of Parliament, Regift. 261. & F.N.B. 229 a. & Parl. 6 E.3. nu.6. 8 H.6. cap. 1. * 2 Chron. 29.15. Ezcebias. Num. ca.10. v.1, 1. vid. fup. Fa. 43.

Rot. Pat. 18 H.3. 2 part.m.17. De prohibitione fad. Erilcopis.

Mandatu est omnib' Episcopis qui conventuri sunt aprid Gloucestriam die Sabbathi in crastino Sanda Katherina firmuer inhibendo quod sieut Baronias suas (quas de Rege tenent) diligunt, nullo modo prasumant confilium tenere de aliquibns quæ ad coronam Regis pertinent, vel quæ personam Regis vel statum faum, vel statum concilii sat contingunt. Scituri pro certo quod si fecerint, Rex inde se capier ad Baronias suas. Teste Rege, &c.

Rot. Par. 15 E.2.

1 parr.m.8, pro

Rege de inhibi-

See the Statute of Tarlifle Anno 35 E.T.

Rex, &c. Venerabilibus in Christo patribus eadem gratia W. Archiepiscopo Cantuarienfi, totius Anglia Primati, ac cateris Episcopis & Pralatis Cant' Provincia ad Concilium Provinciale apud London in proximo conventuris, Mandamus vobis in fide & dilectione quibus nobis tenemini firmiter inhibentes ne in tione facienda. dicto Concilio quicquid in nostri, aut status Corona nostra vel regni nostri prajudicium staruatis, faciatis, seu quoquo modo libet ordineris. Teste Rege, &c.

De isto negotio scribitur præfatis Prælatis per literas de credentia nt in Rotulo

claufarum sub eodem Datu continetur,

Prohibitio fact' Archiepiscopo Cant' & Clero conventur' post festum Sancti 6 E. z. dorf.clauf. Barth quod nihil atemprent in prajudicium Corona.

Vide Cap. Of the High Court of Parliament, pag. 4. & 5. a. for Procuratores

Cleri, & 21 R.2, cap.2,

And further the Bing Did often appoint Committioners by Writ to fit with them at the Convocation, and to have conulans of luch things as they meant to 46 E.3. prem. 8. establish, that nothing should be done in prejudice, ut supra. " And therefore the fatute of 25 H.8. ca.19. (whereby it is probided, that no Canons, Confitution, Dedinance thould be made or put in execution within this Realm by authority of the Convocation of the Clergy, which were contractant or repugnant to the 19 E. 3. Quare Bings Paragative Royall, or the Cultomes, Laws, and Statutes of this non admilicace' Realm) is but declaratory of the old Common law.

part 2.m. 15.&c.

51 E.3.nu.42. 21E.4.45.ubi fup: Rot. Parl. 1 R.z. nu.114 25 H.8.cap.19. 10 H.7.6. per Brian. & 2 Ph. &

Mar. cap. 8, the Prerogatives, and Lawes of the Crown faved. Verfus finem.

But by the laid Act of 25 H. 8. their jurisdiction and power is much limited What their and fraitened concerning their making of new Canons : for they must have jurifdiction now both license to make them, and after they be made, the Kings Royall aftent to al- is, low them, before they be put in execution. But in the end of that Act there is an ervielle Probifo, that fuch Canons as were made before that Act, which be not confrariant not repugnant to the kings Preregative, the Lains, Stafutes of Customes of the Realm, thould be still used and erecuted as they were before the 2 R.3.4. 21 E.4. making of that Ad. But before that Ad a Difme granted by the Clergy at the 42.47. Convocation, did not binde the Clergy before the Bings Royall affent.

King H.8. was acknowledged Supream Bead in divers Convocations.

And if any cause thall depend in contention in any Ecclesiastical Court which 24 H.8.ca.12, may or thall touch the thing, his Heirs, or Successors, the party grieved thall or I Eliz, cap. 1. may appeale to the Apper house of Combocation within 1 5 bayes after fentence

As there be two houses of Convocation, so are there two Prolocutors, one of the Bilhous of the Digher house, chosen by that house, another of the Lower house, and presented to the Bishops for their Prolocutor.

It is called Convocation a Convocando, because they are called together by

the Kings Wirit.

The Clerks of the Convocation called by the Bings Wartt, and their ferbants 8 H 6.cap 1. and familiars thall have such priviledge in comming, tarrying, and going, as the great men, and Comminalty of this Realm called to the bings Parliament.

20 H.6.13. 26 H.8. cap. 1.

C Of Subscription.

Subscription required by the Clergy is twofold: one by force both of an Act of Parliament confirming & establishing the 30 Atticles of Religion agreed apon at a Convocation of the Church of England, and ratified by Aneen Elizabeth under the Ozeat Seal of England. Another by Canons made at a Combocation of the Church of England, and ratified by liting James, as is aforefair.

By the Act of 13 Eliz, cap. 12. referring to Canons made by the Clergy of England at a Convocation holden at London in Aona Domini 1562, containing 39 Articles of Religion, and ratified as is aforefair.

13 Eliz.ca. 12. At a Convocation holden at London Anno Dom. 1562. & The 50 Eliz.

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At a Convocatio Anno dñi 1603. 1 Jac. Regis 6 36.

This Book is ratified and confirmed by Act of Parliament, viz. 2 E. 6.cap. 1 . 5 E.6.c.1. 1 El. cap. 2.8 El.cap. 1. 23 El.ca.r.

Dier 23 El.377. Lib.6.fo.69. Grencs cafe. " Smiths cafe.

Pasch.9 Jac.the resolution of the

Court of Com-

mon Pleas upon

on, fet down in writing by the

King James.

commandment of

The other is by Canons of the Church of England made and ratified by begun at Londos King James,as is afozelaid.

The Subscription hereby required is to three Articles.

The first is, that the lings spajetty under God is the only Suppeam Gover. not of the Realm, and of all other his Highnelle Dominions and Countries, ac.

2. That the Book of Common prayer, and of ordering of Bishops, Priests, and Deacons, containeth nothing in it contrary to the Wood of God, tc.

3. That be alloweth of the faid 39. Articles of Religion, and acknowledge eth them to be agreeable to the Word of God.

And in this Section, Ubi supra, I Jac. The form of the subscription is set down,

which was not expressed in the Act of 13 Eliz.

By the Statute of 13 Eliz. the Delinquent is disabled and deprived info facto. but the Delinquent against the Canon of Ling James is to be proceeded withall by the censures of the Church. This statute of 13 is well expounded in Dier

23 El. 377. & lib. 6, fo. 69. in Grenes cafe.

And I beard Wray Chief Buffice in the lings Bench, * Pafch. 23 El. report, that where one Smith subscribed to the said 39 Articles of Religion, with this addition (fo far forth as the same were agreeable to the Word of God) that it was refolved by him, and all the Judges of England, that this subscription was not according to the Statute of 1 3 Eliz, because the fatute required an absolute subscription, and this subscription made it conditionall; and that this Act was made for avoiding of divertity of opinions, ac. And by this addition the party might by his own private opinion take some of them to be against the Wood of Bod; and by this means divertity of opinions thould not be avoided, which was the scope of the Statute, and the very At it felf made touching Subscription bereby of none effect.

De must also bring a test imonial from men known to the Bishop, to be of found Religion, a test imontall both of his honest life, of profession the Doctrine expressed in the said Articles; and he ought to be able to answer, and render to the

Didinary an account of bis faith in Latin. c.

Befides this subscription, when any Clerk is admitted and instituted to any Benefice, be is Iwozn to Canonicall obedience to his Diocesan.

of the High Commission in causes Ecclesiasticall.

Tipo questions have been made concerning the Jurisdiction of these Commillioners.

First, what Canfes doe belong to the High Commissioners by force of the

mature deliberati. Ad of 1 El. cap. 1. and of the Letters Patents thereupon grounded.

Secondly, in what cases the Digh Commissioners by the said Ac of 1 Eliz. cap. r. and of the Letters Patents to them granted, may import fine and im-

pafforment, and in what not.

It is faid, by force of the Catute of 1 El. For that before this Ac it is agreed, that all Dedinaries and Occieliafticall Indges whatfoever, ought in all Occies flafficall causes to have proceeded according to the censures of the Thurch, and could not in any case have punished any Delinquent by fine or imprisonment, unlesse they had authority so to doe by Ad of Parliament. And the Papall authoutty (as bath been confessed) did never fine or imprison in any case, but ever proceeded only by Ecclesiasticall censures. Seeing then the state of the question concerning fine and imprisonment dependeth wholly upon the statute of 1 Eliz. and is of greatest consequence, and openeth the way to the other question, for it is confelled that by Letters Patents only (without an Act of Parliament) such power to fine and imprison in Occieliasticali causes cannot be granted; the point of fine and imprisonment thall be first handled. And for that every Act of Parliament doth confift of the letter, and of the meaning of the Makers of the Ad:

the Acof I Eliz, both neither by meaning not letter give any power to the bigh Commissioners to fine of imprison any, but in certain particular causes, as thall manifectly out of the Ad it felf appear hereafter. And feeing every Ad of Parliament upon confideration had of all the parts thereof together, is the best Erpolito; of it felf, the parts of this Act of I Elizaboe necellarily fall into confidera.

Firathe Title of the Act is, An All restoring to the Crown the ancient Ju- The title of the rifdiction, oc. By this the nature of the An both appear to be an An of Reft : Alt.

And this is also manifest by the preamble of the Act, where it is said:

Whereas divers good laws were made in the time of the late King of the All. Henry the Eight, for the extinguishment of all forain power, and for the restoring unto the Crown of this Realm the ancient Rights and

Jurisdictions of the same.

From whence this reason is drawn, that feeing the erprese letter and meas I Ratio. ning is to reffore to the Crown the ancient Burisdiation Ecclefiafficall, and no Commissioner by force of that ancient Occlesiasticall Burisdiction could impose fine and impationment, that thefe Commissioners having their foace from this An of Rectitution, cannot punish any party by fine of implifonment, otherwise then thall be bereafter expressed.

The first clause of the body of the Ad (to let in the restitution of the ancient Right and Jurisdiction Occlefiafticall within the Realm) both abolith all forain

Jurisdiction out of the Realm.

Then followeth the principall clause of restitution and uniting of the ancient Aurisdiction Occlesiasticall, being the main purpose of the Ac, in these words.

Be it enacted, that fuch Jurisdiction, &c. Spirituall or Ecclefiasticall, as by any Spirituali or Ecclefiasticall power or authority hath heretofore been, or lawfully may be exercised or used for the visitation of the Ecclesiasticall state and persons, and for reformation, order, and correction of the same, and of all manner of Errors, Herefies, Schismes, abuses, offences, contempts, and enormities, shall for ever by Authority of this Parliament be united and annexed to the Imperial Crown of this Realm.

And upon this clause being the finall intention of this Act expressed in the Titleand Pecamble, doe the subsequent clauses depend; Therefore this clause is

especially to be considered, and therein these things are to be observed.

Firft, that by this clause Dueon Elizabeth was not declared Supream head, ec. but by a former clause in this Adviz. that the Statute of 1 & 2 Ph. & Mar. cap. 8. (whereby amongst others, the Act of 26 H. 8.cap. 1. and 35 H. 8. cap. 3. were repealed) was by this Ac made utterly bold, and consequently the Ac of Repeal being repealed, the Ads of 26 H. 8. cap. 1. and 35 H. 8. cap. 3. were as monall others implicite revived, by which Aas of 26 H. 8. and 35 H.8. It is declared and enacted, that the King, his heirs and successors should be taken and accepted the only supream Head in earth of the Church of England, and should have and enjoy annexed to the Imperiall Crown of this Realm, as well the title and stile thereof, as all honours, dignities, preheminences, jurisdictions, &c. to the faid dignity of supream. Head belonging, &c. 12 which title, title, & oig. nity of supream Head of the Church of England, Bing H. 8. his beirs and sucrelloss had and have all Ecclelialticall Inrisolution what loever. So as the first clause reviving the Act of 26 H.8. &c. thereby Ducen Elizabeth, ber beirs and fuccestors were supream Bead of the Church of England. And there this Ac extending to raise a Commission for the necessity of the time, intended only to restoze and anner to the Crown such Jurisdiction in some particular points as by the intent of the Statute, the Commissioners should execute, and not to de-

The preamble

2 Ratio.

clare by this clause that her spajetty thould be supream bead of the Thurch, for

that was provided for before.

Secondly, that no Jurisdiction is by this Ad restored a united to the Crown. but fuch as before the An han been, or lawfully might be exercised or used for the reformation, ec. correction, ec. Whereupon it is concluded, that feeing that no man could be fined or imprisoned by force of any Jurisdiction Ecclefiafticall, which had been used, of lawfully might be used before this Ad, that therefore by this Act no power of fining and imprisoning in Occlesiasticall causes is given by this Act.

The third observation is, that this clause divideth it felf into tino branches: the first concerning the visitation of the Ecclesiaftical state and persons. This branch was enacted out of necedity, for that all the Bithops, and most of the Clergy of England, being then Popith, it was necessary to raise a Commission to deprive them, that would not deprive themselves, and in case of restitution of religion to have a more fummary proceeding then by the ordinary and prolice course of law is required. This manch concerns only Ecclesiafticall persons: So as as necessity did cause this Commission, so it should be exercised but upon necellity, for it was never intended that it should be a continual standing Commillion , for that thould prejudice all the Bithops of England in their Ecclefi. afticall Jurisdiction, and be grievous to the subject to be drawn up from all the remote parts of the Realm, where before their own Diocelan they might receibe juffice at their own doors.

The first Commission upon these Statutes, wherby about 20 Bishops were depriped, and many others of the Bopilly Clergy is faid to be loft, and involled it is not, as it ought to have been. And it is affirmed by some that have feen it, that it valled not above twenty theets of paper copy wife; but now the Digh Commilli. on contains above three bund; ed theets of paper. And it is likelvile affirmed, that never any High Commission was inrolled (as they all ought to bave been) untill my Lord Chancelor Egertons time, fo as no man before that time could

know what their Jurisdiction was till that time,

The second branch is, And for reformation, order, and correction of the same (that is, of Ecclesiasticall persons) and of all manner of Errors, Herefies, Schismes, abuses, offences, contempts, and enormities. So as thefe two branches extend not to the universality of the Supremacy, but only to those points whereunto the Commission to be raised by this Ad thould ertend, for which purpose nothing is recozed or united by this Ad, but only the bilitation of the Ecclefiafficall state and persons, and the reformation of the fame, and of all Errors, Perelies, Schilmes, abules, offences, contempts, and

enormities which be criminall.

The Inristitation being restored to Ducen Eliz, her heirs and successors, nert and immediately both the Ad, et. give her power to allign and authorife Commillioners to execute this jurisdiction restored and united to her, for which purpose it is surther enacted, That your Highnesse, your heirs and successors shall have power and authority by vertue of this Act by Letters Patents, &c. to affigne, name, & authorize, &c. fuch perfons being naturall born subjects, &c. as your Majesty, your heirs and successors shall think meet to exercise, use, occupy, and execute under your Highnesse, your heirs and fuccessors, all manner of jurisdiction, &c. in any wise touching or concerning any Spirituall or Ecclefiafticall jurifdiction,&c. and to visit, reforme, &c. all errours, herefies, schismes, abuses, offences, contempts and enormities, which by any manner Spirituall or Fcclefiafficall power, authority, or jurisdiction can or may lawfully be reformed, corrected, restrained or amended.

Dut of this clause of Allignation it is to be observed, that the subffance of the Commission of assignation or deputation is described and purtrayed out both for manner and matter by this claufe. 1 That

The clause of Assignation of the Jurisdiction restored by this Att.

1. That it ought to be under the Breat Seal.

2. The Commissioners to be alligned ought to be naturall born subjects of

Ducen Eliz. her heirs og fuccellogs.

3. Their Authority, viz. To exercife ufe,occupy, and erecute under your Digh: melle, your heirs and fuccelloss, all manner of jurisdiction, sc. and to bilit, and reform all fuch Errors, Herefies, Schilmes, abufes, offences, tc. which by any manner of Eccleliafticall og Spirituall power can, og lawfully may be reformed, corrected, tc.

4. The local limits and bounds of their Commission, viz. within the Realm

of England, sc.

So as by this claufe there is no queftion, but the Commissioners for fuch cau- 3 Ratio. fes as are committed to them by force of this Ad, may, if the Commissioners be competent, proceed to deprivation of the Popill Clergy, which was the main objet of the Ad, or to punto them by Occlefiatticall confures, and by no words, or meaning hitherto can punith by fine of imprisonment, for that no @cclesiafticall power could reform and corred (as the ftatute fpeaketh) in that manner. And without queftion , if the Commissioners be competent , that is , if they be spirituall men, they may proceed to leutence of Excommunication , which may right miffioners may well be certified as wel as Ercommunication before Commissioners Delegates; excommunicate both of these Authorities being under the Breat Seal, and each of them babing if they be comauthority by force of feverall Acts of Parliament. And Ercommunication certified by Commissioners Delegates hath been allowed, as it appeareth in 22 Eliz. Dier 371. And in many cates Acts of Parliament babe adjudged men ercom. municate ipio facto. But if they be meer Lay men, the fault is not in the statute or in the law but in the nomination: and upon Certificate made of the Ercommus nication according to law, a Significavit of Cap. Excom. thall be awarded out of the Thancery, for the taking and imprisoning of the bodies of such excommunicate persons.

Row after the Letters Batents of the Committion are defcribed, and limited. followeth a clause of direction to, the Commissioners to keep themselves within

their Commission in these words.

And that fuch persons so to be named, &c. after the said Letters Pa- The clause of tents to them delivered shall have power and Authority by vertue of Execution, this Act and the faid Letters Patents under your Highnesse, your heirs and fuccessors to exercise, and execute all the premisses according to the tenor and effect of the faid Letters Patents, any matter or cause to the contrary in any wife notwithstanding.

This is a clause of reference meerly to the former parts of the Act, and vet by colour of this clause the Digh Commissioners doe pretend to fine and imprison.

That this clause referreth wholly to the former parts of the Ad, it is apparent by the very words thereof, for first, the words be so exercise, use, and execute all the premifies, which word (premifies) referreth to all the former branches of the Ad, viz. 1. To the ancient jurisolation Etclesialticall rettozed by this Ad, by which ancient jurisolation no person could be corrected by fine or imprisons ment. 2. To fach furisolition Spirituall of Ecclefiafticall, as by any Spiris tuall or Ecclesiasticall power bath beretologe been, or lawfully might be erercised. or used; for these be the expresse words of the main clause of restoring & uniting of the ancient jurisdiction to the Crown. But it is agreed, that before this Act no man could be punished by fine of imprisonment by any Ecclesiasticall power, unless it were by force of some Act of Parliament; therefore by these words in this claufe (to execute the premifics) the Committioners cannot fine og imprifon. This word (premiffes) haft relation to thefe words in the claufe of affignation nert going before this claufe, viz. to vilit, reform, tedreffe, order, correct, and amend all fuch errors, herefies, schilmes, &c, which by any manner, power, authority, or jurifdiction Ecclesiasticall or Spiritual cap, or may lawfully be reformed, &c. corrected,&c. but no correction before this Ad could be by fine or imprisonment, but in certain speciall cases.

The High Co-Dier 13 El. 371.

Cap. 74.

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Premises.

Then this clause followeth, (according to the tenor and effect of the faid Lecters Patents) which words also be wholly refer to the former parts of the Art. For if these words (to execute all the * premises) be words of reference, then the abolition of these (according to the tenor and effect of the * faid Letters patents, any matter or cause to the contrary in any wife not withstanding) must of necessity be referred also to the former parts of the Art, by none of which power is given to fine or imprisonment.

Also this word (execute) cannot but be referred to the former authority. And tt is not faid according to the terror and effect of any Letters Patents, and pet if the words had been fo, the same being coupled to the word (premises) had not tefrained them, for they could in that cale but only have executed the premiles; but the words be according to the tenor and effect of the Letters Parents before limited by the faid Act, that is, first that the Letters Patents be under the Great Seal, 2. That they be made to naturall boan inbjects. 3. Their anthonity is declared with a limitation. 4. The local limits and bounds of the Commission is fet bown : and this is the true and genume fente of thefe words, viz. To execute the premiles according to the tenor and effect of the faid Letters Patents. And therefore we marvell boto in a case of so great consequence, and so visible to every eye that look into the An of 1 Eliz. the very two dos thereof are (for the adbantage of the High Commissioners) in the very binding clause altered, and changed. For there it is alleaged, that the Katute of I Eliz. faith, that the Digh Commissioners shall execute the premises by vertue of this Ad according to their Commission indefinitely without reference of restraint, whereas the words of the Adbe, according to the faid Letters patents, the effect whereof was limited and expressed before. And by the authority that is claimed by the Commissioners, who feeth not, but that confication of lands, for feiture of goods and chattels, tc. as well may be imposed, as fine and impationment? But were it not a violent interpretation directly against the letter and meaning of the Ad, and full of great inconvenience to make of thefelatter words this contractor, viz. that the wigh Commissioners should correct and punish all the Errors, Herefies, Schilmen, Diffences, Abules, Contempts, and Cnormities, tt. under fuch pains, forfeiture, and penalty, as Queen Elizabeth, her beirs, and accessors, by any Letters Da. tents thould impose or appoint: and that consequently by force of the generality of this construction, the bid impole and appoint fine and impollonment. Which construction should be first disputly against the words and meaning of the Act 602 the causes asozesaid. Secondly, that by the same reason by the generality of such a conftruction Ducen Elizabeth might babe imposed forfeiture of lands, confifcation of goods, nay corporall punishment, lotte of member, and of life also, for incontinency, folicitation of chattity, working on a Holiday, or any inferiour offence punishable by the Ecclefiafticall Law, and yet the fentence of the Commillioners in fuch cales thould be both fatall and finall, and uncontroulable by any ordinary means, either by Appeal, Crroz, Moderata mifericordia, or other. wife. Thirdly, that this violent confirmation, under myficall and cloudy words, thould extend to fine and impationment, et. all perfons, as well Lay men of what effate, begree, or fer foeber, in cales Eccleffasticall (where they were not to be fined and imprisoned before) as to Ecclesiasticall persons, who were the proper objects of this Act; And then by the confirmation that bath been made of the other five in cases tohere an executor betaineth a Legacy, or a Partibioner payeth not his tythes, or the like concerning Meum and Tuum, the Queen, tc. might have infliced (as hath been faid) tohat punishment the would, and the High Commis-Honers fine and impatforment (as it trandeth at this day) without limitation of time, be it never to great, or time of imprisonment, be it never to long, and without controlment by any ordinary remedy, be the fentence never fo unfult or erromeous; then which nothing could be more ablurd and inconvenient. Talis interpretatio in ambiguis semper sienda est, ut evitetur inconveniens & absurdum. But this confirmation hould not be in ambiguis, but directly against the words and meaning of this Ad. And feeing it bath been granted that the Wapall antho-

Nota.

rity or any other having Ecclefiafticall jurifolition could not fine and imprifor before this Ad of a Bliz, and that it is expectly fait in the preamble of this Ad. that where in the reign of ling H. 8. divers good laws were made as well for the ertinguithment of forein authority, as for refloring to the Crown the ancient jurifications, ac. by reason whereof the subjects were kept in order, and difburdened of great and incolerable charges and exactions (which good lates being revealed by Ducen Mary the fato An both revive and reffore) It followeth a concellis, and by the Letter of this Ad, that it was never the meaning of the makers thereof to extend the faid clause to fine and impation the subject for Ecclesiasticali caules, and to make him fubject to greater confilcations, forfeitures, and puntib: ments, where his body before this Act was not subject to imprisonment but upon the Bings Warit De excom' capiendo, not his body, lands, and goods, to fines, or other penalties, or punithments, by them to be imposed, 4c. for this were not by this Act of restitution to ease them of former intolerable charges (as the statute (peaketh) but by this Ra to make them subject to greater and more heavy pains, punishments, and charges, then ever they were before. And the fratute of 27 H. 8. cap. 15. faith, that the Canons, ac. were obermuch onerous to his bigh. neffe lubjeds, but they were never lo onerous as this Ad thold be. But Uno abfurde dato infinita fequuntur. Wie must therefore retire our felbes to the tert of the Act of I Eliz, the only ground of this question, and thereupon the conclusion is, that no Letters Patents can by bertne of this Act of I Eliz, gibe any power to the Commissioners to imprison, except it be in certain particular cases, which now fall into confideration. For example. The ftatute of : H. 7. cap. 4. doth 1 H 7.cap 4. give power to Bilhops, tc. to commit Paletts convided of any incontinency to prison, and that no Bilbop, tc. thall be chargeable therefore in an Action of false imprisonment. Polo feeing that fuch jurifdiation Occiefiaticall (that is, to bear, Determine, and punifh, ac.) as by any Spirituall of Colettafficall power of authoutty before the faid Act of I Eliz, had been, or might lawfully have been erercifed or used for the vilitation of the Occlesiastical state and perfons, and for reformation and correction of the fame, and of all manner of Errors, Berefies, Schilmes, sc. and that every Bilbop, cc. might punith fuch offenders by imprisonment according to the faid Ad, that such power (and the like in any other case by Act of Barliament if any be) is united to the Crown and may be committed Vid. flat, of 2 H. 4 ted over to the Digh Commissioners as before the fato Act by any Spirituall or Ecclefiafticall power had been or lawfully might be used, which be the words of the Act it felf.

But these generall words, viz. Which have been or lawfully might be used, &c. do not ertend to any authority or power given by any Act of Parliament to any Eccleliafticall Judge: which Ad food repealed and admilled by a former Ad of Parliament, and had no effence at the time of the making of this Act of r Eliz. and that for two reasons: First, for that this Ac of I Eliz. both repeal and revive divers Acts of Parliament, and therefore thall not be confirmed to reveal or revive any other by the faid generall words. Secondly, for that generall words thall not extend to authorites repealed or admilled by Ast of Parliament. And to Parlia, 28 Eliz. It was adjudged in the Lord Darcies cafe in the Bings Bench Pafeh. 38 Eliz. where the case was, that the Lord of the Manne, of Thosp litthe was amongst other franchiles and immunities discharged by the Letters Patents of Lina E. 4. of Purbeyance: which Charter for the point of discharge of purbeyance was admulled by the flatute of 27 H. 8. cap. And after the spannos comming to the hands of bing B. 6. be by his Letters Watents granted the faid Mannos to the # 010 Darcie and his heirs: and further granted Tor, talis, eadern, hujufmodi & confimilia jura, jurisdictiones, franchesias, privilegia, &c. quot, quanta, qualia, & que, &c, prout aliquis dominus manerii habuit, tennit, feu gavilus fuit virtute alicujus carta, doni, seu concessionis aux aliquarum literarum patentium per prafatum regem, aut per aliquem progenitorum fuorum quorumeinq; fact concess Mich.21 & 22 81. feu cunfirmat', aliquo flatuto non obitante. And it was abjudged as it had been in Scaccario, the before in the Lord Pagers cafe, Mich. 21 & 22 Eliz, in Scaceario : that albeit Lord Pagers cafe,

ca.13. & 1 Eliz. ca. 1. and observe them well.

coram Rege the Lord Darcies cafe

fuch a generall grant had been enacted and confirmed by Act of Parliament, yet had not those generall words extended to revive any authority, franchise, privilege, it, once granted, and which was after, and before the grant repealed or resumed by Act of Parliament, untelle there had been speciall words to revive the same, but should extend to other authorities, franchises, and priviledges which stood not then repealed.

1 H.7.12 13.

And there is a far Aronger cale reported in 1 H. 7. fo. 12. & 13. By anthority of Parliament all preheminences, prerogatives, franchiles, and liberties were given to Ling H. 7. In taile generally without limitation or laving. And the question was whether the franchiles and liberties of Lords and other insertions subjects were given; and it was resolved by all the Judges that they were not, to, that the Act was to be intended to do no insertious subject wrong, but the generall words were to be intended of such as might be intailed without prejudice of the subject; which is a Aronger case then this, so, besides the prejudice of the insertious Drawing him from remote parts to his intolerable charge, where he might receive justice at home, the clause preceding of uniting, and latter particular words do limit and expound the generality of the somer words.

Poly that divers and many other Acts of Parliament, which are generall in words, have upon confideration of the milchief and all the parts of the Act (for the avoiding of the inconvenience and absurdity that might follow) received a particular interpretation, it appears the our Books in cases of far less inconvenience.

ence and abfurdity.

Pl. Com. fo. 369. Stowels cale.

4 E 4.4 & 12.

Pl.Com. in Stowels case fo. 3 691 the Preamble is to be confidered, for it is the kep to open the meaning of the makers of the Ad, and mischiefs which thep intend to remedy. The Judges of the Law have ever in fuch fort purfued the intents of the meaning of the makers of Ads of Parliament, as they have erpouns ped Ads general in words to be particular, where the intent hath been particular, lar (which are the words of the Book) And therefore upon that rule it is there adjudged, that where the fratute of 7 E. 6.18 generall ; If any Receiver or minister accountant, ac. receive of any person any summe of money to payment of any fees, ac. Chall forfeit, 6 s, 8 d. for every penny; that this do not ertend according to the generality of the wood to the Receiver of common perfons, because thele words subsequent be added. (otherwise then he lawfuly may by former laws and flatutes.) Bow the Judges restrained the generality to a particular, to the Lings Receiver only: for that no law or Catute was formerly made concerning common persons Receivers, sc. But in the case in question, as well the precedent clause of restitution, as the subsequent clause expressing offences in particular. and the words in the fame generall fentence, viz, under your Highheffe, &c. and wincipally the cause of the making of this Ac doqualific the generality of the inords. And pet notwithstanding it was resolved by all the Court in the said case of Stradling, fo.201.a.that the Receiver of common persons were within the mozds of the laid flatute. But there it is laid, that if a man consider in what point the milchief was before the Matute. and what thing the Parliament meant to reducte by this, be thall perceive that the intent of the makers of the Act was to punish only the Pinisters of the King. And a little after the Judges say that the file of that Actis. An Act for the true answer of the Kings Revenues, And by this also the infent of the makers of the Act is to be colleged, and these be the words of the book, which is a far ftronger cafe then the cafe in question.

of them that made it, where the woods thereof are doubtfull a uncertain, and according to the rehearfall of the statute; and there a generall statute is construed particularly upon consideration had of the cause of making of the Ad, and of the rehearfall of all the parts of the Ad. To conclude this point with a generall rule allowed by all lates in construction of statutes. Quamvislex generalizer loquitur, restringenda tamen estant estante ratione & ipsa cesset: cum enim ratio in anima vigory; ipsus legis non videtur legislator id sensiste, quod ratione careat,

etiamfi

etiams verborum generalitas prima facie aliter snadear. Seeing then so many inconveniencies against reason, and the meaning of the makers of the Act should follow, it is evident that the generality of the said words in the clause of Actionation shall (as they ought) be limited by the clause of Restitution, as both bin said. And it agreeth not well with the sile of the High Commission to deal in pety and inferiour causes. And so, the recitall of a Branch of this Act in the statute of 8 Eliz, cap. 1. It referreth to the Act of primo it self, and is only in the Presamble, and therefore both neither increase nor diminish the same. But albeit they have constance and jurisoitation of enormous and between saules, according to the originall institution, yet cannot they punish the offendor in the same by sine or imprisonment, unless the same were punishable by sine or imprisonment before the making of the said Act of a Eliz, by some Act of Parliament unrepealed at the

making of this Act.

But it is faid (enormous) is uncertain; Surely in an Act whereof many of the makers are Lay and unlearned men, it hath been expounded by law to be equipol: lent to beinous, hoppible and erophitant. And this appeareth by the Statute of 2 E. 3. cap. 2. Commillion of Dier and Terminer, cc. Mail not go out, but where the trefpade is hourtble. Row if fuch Committion be granted for a fmall caufe, a revocation thereof, which is a flat prohibiton, both lee, as it appeareth in the Regifter 125, and the woods thereof be, Quia non enormis lafo, Which wood (enormis) in that Warit both expresse this word [horrible] in the faid Ad, and there is as great uncertainty in that case upon this wood [enormis] to prohibit the commillioners of Dier and Merminer, as in the cale now in queltion concerning the Occlesialticall Committion, and especially in this Act of prime it ought to be taken to be boartile, exorbitant, & extra omnem normam; for that the bigh Commissioners to claim to fend for all Degrees of men and women, and out of all the parts of England of Wales, be the place never to remote, tc. But the Commillion of Dier and Terminer cannot be taken but in the proper County where the fact was bonc. And pet it is evident by all which hath been faid, that his Majeffp bath, and Ducen Elizabeth befoze him had as great and ample fupremacy and jurifdiation Ecclefiafticall as ever laing of England had before them. and that bad fully and rightly pertained to them by diversofter Ace and by the ancient laws of England, if the faib clauftof Anneration in the faib fratute of 1 Eliz. had neber been inferted.

This Act of 1 Eliz. provideth against them that should by printing, writing, or words, maintain or befend the jurifolition fpirituall of amp forein Prince, Prelat, ec. within this Realm; that every fuch person being lawfully convited by the course of the Common law fall for the first offence forfeit and lose all bis and their goods and chattels. And if any person so convided thall not be tooth of his proper goods and chattels to the value of so li. then fuch perfon fo convicted thall fuffer impiforment one tohole year, ac. Polvalbett upon the maintenance or befence of the Pores Supremacy Depend fo many mischtefe as the principal scope of this and other Ads was utterly to abolish and ertinauish the same, and that it is High Treason in the second degree : vet see bow tempes rately this Act both punish that most cangerous and damnable erroz. And albeit the proceedings at the Common law are reverfible by Writ of error; pet the flatute addeth two cautions, that no persons thould be impeached for any of the offences by preaching, teaching, or words, unless they be lawfully indiced within the space of one half pear. And if any person be impailoned, and be not indicted within half a pear, then the person so impalsoned thall be fet at liberty. Bow if the party offending in fo high and supream an offence, as the maintaining of the Popes Supremacy, Shall be punished for the first offence fo tempe. rately, and with fuch caution and limitation, it was never the meaning of the Statute to charge the Subject with fine or imprisonment by the discretion of the Commissioners without limitation either of time of impilonment, or quantity of fine, for lefter crimes and offences, whereunto he was not subject before the making of this Act.

But

2 E.; cap.s.

But if the meaning of the Hakers of the Act had been to have inflicted noting upon the subject not only fine and imprisonment, but by the same reason confication of goods, soficiture of lands, nay any corporall punishment, sc. they would not under such clowdy and dark words have instituted those greater punishments sor lesser offences without some limitation, as they did sor the greatest offences of all, and not to have less eless offences to the absolute and uncontrollable power of the High Commissioners by any ordinary mean.

If the High Commissioners might have sined and imprisoned men so, offences against the Ecclesistical laws, to what end were the statutes of 23 Eliz. 28 Eliz.&c. made against men so, abstaining and not comming to Divine service.4c. and why did those Ads institute penalty of 201, the month, and imprisonment, 4c. with a discharge of the penalty, 4c. upon submission, if the High Commissioners might have sined and imprisoned them absolutely without certainty of any sum, or limitation of any time of imprisonment, and without any ability or power by submission or conformity to ease themselves. And yet absence from Divine service is a meer Ecclesistical cause; and the like may be said of divers other Ads of Parliament of like nature.

Thus bath this statute been plainly expounded by the parts of the same, according to the natural and genuine sense, and the original institution and jurisdi-

ation of the High Commission by force of the laid Aa truly expressed.

And concerning the form of Commissions and practice by the High Commissions fioners in the reign of the late Ducen Eliz, by fining and impationing to; adulte. ry, fornication, fimony, ulary, defamation, ec. it may be that fuch fines babe been imposed, but, as we be informed, not one of them levied in all the reign of Aucen Eliz, by any judiciall procede out of the Erchequer in the time of Sir Edward Sanders, who was Chief Baron at the time of the making of the faid Ad, Sir Robert Bell, Str John Jefferies, Str Roger Manwood, og Str William Peryam Thief Barons of the Erchequer : So as in all the late Ducens time (as the be informed) no fine was levied, or any fubject in his body, lands or goods charged therewith, which would not have been by fo many worthy men allifted with dibers other grave and learned Barons prefermitted to be either levied or written to, by the Court, if by law the same ought to have been levied. And the subjects (for the greatest part) being wrong ally fined, imprisoned, and injured by colore of the High Commission, asked no abbite to take any ordinary remedy, for that the High Commissioners (knowing the weaknesse of their Authority) kept the Commission fecret, and contrary to law and justice suffered not the same to be involled in the Chancery, so as the subject lived under an unknown Commission and Authority (& Mifera eft fervitus ubi jus eft vagum aut incognitum) untill of late the Lord Chancelor (as both been faid) according to law caused the same to be inrolled; and bery few upon ferious confideration took an erac furbey of all the parts of the Act of 1 Eliz. And this is the cause why their Presidents (if they affirm truly) may be many, especially against the weaker soft: and the judgments and Brefidents in the kings Courts concerning thefe matters, fetn, as thep give out, charging the Judges of the Realm with Innovation. And yet soms being intolerably grieved, sometime to their utter undoing, by the High Commillioners, upon complaint made to the highest Courts of ordinary Justice in this Realm, the Judges upon confideration had of the flatute of a Eliz. which is the foundation whereupon the High Commission is grounded, have, as often as complaint bath been made, relieved them according to law and justice.

In Armeres case the whole Court of Exchequer in the late Ducens reign, judicially resolved, being the kings proper Court, that the Digh Commissioners
could not punish any man so; working on a Holy day, about it he a matter of
Ecclesiasticall constance, but ought by the true meaning of the statute of 1 Eliz.
to be punished by the Ediocelan, which is to be seen of Record.

Also in the reign of Dueen Eliz, William Taylor Clerk, Parlon of Springfeld in Offer did implead William Massy Bent, before the Pigh Commissioners sor giving unreberent speeches to the Pintiter, 4c, sor carrying his Com on Holp

Taylors cafe, Mich. 44 & 45 El. Rot. 1255. Simile 43 & 44 El. Rot. 503.

days,

bays, for not luffering the Parlon and Partibioners to come thorough his pard in Rogation week in the perambulation, and not giving them a repair as usually be had done, that he whittled and knocked on the Parsons Barn booz, and faib be did it to make him mulique for his daughters mariage, and many other Articles of like nature; and it was ruled upon open motion, and often debating by the whole Court of Common pleas, that the High Commissioners could not deal with fuch inferiour offences, but are to be left to the proper Diocefan, who is to reform the same with leffe charge and travell in the proper Diocelle. And thereupon a Prohibition was granted by the Court of Common Pleas, whereby it appeareth, that they cannot hold plea of all Ecclefiafficall causes.

The like Prohibition was granted out of the Common pleas in the faid late Queens reign, between Robert Pool Clerk Parlon of Winchelley, and Thomas Gray, to the Bigh Tommissioners, for that they held plea for assaulting and laping violent hands on the faid Robert Pool being a Warfon, upon open motion

and argument by the whole Court.

had no power to impailon him in that cafe.

Hil. 3 Jac. Regissin Communi banco, between Lyn and Wats for momile of a peerly fum in mariage.

Trin. 3 Jac. in Communi Banco, betiveen Jeneway Parlon of I. in Cf. fer, and Porter for Defamation, and laying violent hands on a Clerk.

a And concerning fine and impaisonment, Anno 9 Regina Eliz. which was about eight years after the ftatute of I Eliz. Sir James Dier and Dibers other of the Judges were then living, that were present at the making of the said fatute, Thomas Lee an Atturny of the Common pleas, being convented before the Digh Commissioners for hearing of a Paste, was by them in their proceedings committed to pailon, which matter being returned by Habeas Corpus, he was upon great confideration had, by the Lord Dier and the whole Court of Common pleas discharged of his imprisonment, for that the High Commission

The like resolution was in 18 Eliz, by the Load Dier, and the whole Court of 18 El Dier fo. Common pleas, in the case of one Hinde, who being convented before the Biah Hindes case. Commissioners for Alury, to answer, ec. was thereupon imprisoned by them. & bp

Habeas Corpus delivered, for that the imprisonment in that case was untawfull.

1By warrant from the High Commission on the reign of Queen Eliz, directed to Richard Buller Constable of Aldring in in the County of Porthampton, for attaching and arresting of the body of John Simpson of Aldrington aforelaid, and bringing his body before the High Commissioners in case of Adultery with the wife of Edward Fufte, the Constable being astisted with one William Johnson fervant of the faid Edward Fufte, the faid Constable with Johnson came to a Taltows house in Aldrington where the said Simpson was, and the doors being open would have at eight of the clock at night arrested Simpson by the faid Warrant, which the faid Constable read unto him, notwithstanding the faid Simplon relited them, and in his own defence (and thewed how) flew the faid Johnson that came in aid of the said Constable. Sow the question before the 310 tices of Affle of that Tounty, (Simpton being in the Gaol therein) What his offence was ? wherein the doubt rected in this, whether the Constable might lawfully attach and arrest the body of the said Simpson, which in law is an imprisonment) for if he had lawfull authority to arrest him, then the offence was wilfull murder in killing one that came in aid of a Pinifter of Juffice in erecution of his office : but if the Constable had no lawfull authority to arrest his body by tozce of the Bigh Commillioners Carrant, then was it but fe defendendo, a small offence, which doubt wholly consisted upon construction of the statute of 1 Eliz, for by the Letters Patents expecte authority is given to the Digh Committioners to fend for the body of any offendor, ac. by Purfevant, or bo Warrant. The matter being weighty, and the faid Simplon being by the Coro. ners inquest indiaco of wilfull murder, supposing the faid Warrant to be lawful, the Juffices of Affile thought not good to proceed against him at those Affiles, but deferred it till the next Affiles: At what time after this long time of delibera-

Grayes cafe, Vid.infra pa. 734. Trin.44 El.Rot. 1233. in Com. Banco. Simile 40 Eliz. Rot.411 in Com. Banco. The like in the Kings Bench, Palch 39 Eliz. Rot-100. & Palch. 41 Eliz. ibidem Rot.235. · Tr. 3 Jac.in Com' Banco l'orters cafe. aMic., & 10 El. Rot. 1556. Lecs

Simplons cafe before the Judges of Affife in Notthampronflire,

Supra pag.333. Grayes cafe. William Thicknes cafe, in Communi Banco.

3 H.8.cap.19.

tion, and upon conference, it was refolded, that the flatute of 1 Eliz, gade no power to the Pigh Commissioners to make any Warrant to arrest the body of Simpson in that case, but ought to have proceeded by Citation: and therefore that Simpson killing the said Johnson had committed no murder; and so the Jury upon his arraignment sound him not guilty of namber according to the direction of the Court, as it appeareth by the Record it sels. And it was resolved in Grayes case asociated, that so, the battery of a Spinister they could not fine and impossion.

william Thicknes having the priviledge of the Court of Common pleas, had a Habeas Corpus to the Sherif of London for his body, with the cause, he being under their custody, who returned that the Pigh Commissioners had committed him to their custody by force of his Hajesties Commission for causes Ecclesiasticall, and of the statute in that case provided, for that he was conduced before them of Adultery, and other contempts and enormities appertaining to Ecclesiasticall conusance. And the case being debated in open Court, he was discharged of his imprisonment, for that by the statute of a El they could not imprison him.

1By the fatute of as H.S.cap. 19. it is enacted, that for lack of Justice at or within any of the Courts of the Archbishops of this Realm, or in any of the Kings Dominions, it shall be lawfull to the parties grieved to appeal to the Kings Court of Chancery, and that upon every fuch appeal Commissions shall be directed under the Great Seal to fuch persons as shall be named by the Kings Highnesse, &c. which Commissioners so by the Kings Highnesse, &c. to be named or appointed, shall have full power and authority to hear and finally determine such Appeal, and that such judgment and sentence as the said Commissioners shall make and decree in and upon such appeal, shall be good, effectuall, and definitive, Tabich words, albeit they be more generall, with leffe reference to the precedent matter, then the Ad of I El. pet have such Commissioners no colour to fine or impation any but where the words be and fuch judgement and fentence as the faid Commissioners shall make and decree these generall words have these words implicite annexed to them [according to the Ecclefiafficall laws] thall be good, effectuall, ec. So in the statute of I Eliz. fuch words are implicite to be added to the faid clause, viz. That the High Commissioners thall execute the pre-Patents by the rule of the Ecclesiasticall milles according to the faid Le law of Authority of Parliament and fince the High Commission was involled and made publique, many prohibitions have been granted according to Law and Juffice upon complaint made by the parties grieved.

And in the reign of the said late Dueen Eliz. it was resolved, that the Digh Commission should be limited to certain particular enormous and erorbitant causes, which if it were pursued would breed great quiet and repose within the

Realm.

In the reign of the said late Queen a Prohibition was granted by Sir James Dier Thief Justice, and the whole Court of Common pleas, 10 Febr. Anno 21 Eliz. to the High Commissioners so, that they did hold plea de jure Advocationis.

a And in my Lord Andersons time in the reign of Ausen Elizabeth the Common pleas granted divers prohibitions, as it appeareth before, and two of speciall note between Baker and Broughton, and another between Blackheath and the Bishop of Gloucester. And in my Lord Gaudies time who succeeded the Lord Anderson and enjoyed his place but a short time, yet in that time the Court of Common pleas granted Prohibitions also to the Pigh Commissioners.

Many other Prohibitions have been granted to the High Commissioners out of the Court of Common pleas of after times.

In the Kings Bench there are also many Prohibitions granted to the High-Commissioners in the times of the Lord Wray, Lord Popham, Lord Fleming, &c. which are to the same effect as those which have been cited be.

And wee will conclude with the confession of the Lord Archbishop Ban-

roft

be

ba

of

See Hil. 17 El.
Rot, 1402, Inter
Honr, Evans Clerieum queren' &
Thoman Jefferies Clericum
Defendane.

Hil. 3 Jac.

Mich. 41 & 42
Bl. Rot. 2919.
and an Attachment thereupon,
Mich. 42 & 43 El.
Rot. 3332.

croft himfelf in his 22 Article, his own woods being: Of latter dayes, whereas See the Articles certain lewd persons, (two for example sake) one for notorious adultery and other and answers in untolerable contempts, and another for abuling of a Bilhop of this Kingdome the 2 part of the untolerable contempts, and another for abuling of a Bilhop of this Kingdome the 2 part of the untolerable contempts, and another for abuling of a Bilhop of this Kingdome the 2 part of the by threatning speeches and sundry rayling searmes, no way to be endured, Exposition of were thereupon fined and imprisoned by the High Commissioners till they Articulicken, &c. should enter into bonds to perform further orders of the faid Court, the one was delivered by Habeas Corpus out of the Kings Bench, and the other by a like writ out of the Common pleas, and fundry other Prohibitions have been likewise awarded to his Majesties said Commissioners upon these suggeflions, that they had no authority to fine or imprison any man, &c.

Bo this Article it appeareth, that before the time of the Thief Juffice of the Court of Common pleas that now is, and before of the Judges, that now be, were called to be Judges by the judgment and resolution both of the Court of Bings Bench and Common pleas by Habeas Corpus, the parties that mere fined and imprisoned by the Bigh Commissioners in case of Abultery and frandall of a Bilhop, tc. were by the law bischarged, for that the fining and

imprisonment of them was unlawfull.

And these were the resolutions of the whole Court of Common pleas Pasch. o Jacobi Regis, upon often conference and mattire deliberation, and accordingly thep proceeded.

The Prerogative Court of the Archbishop of Canterbury.

Curia Prerogativa Archiepiscopi Cantuariensis.

This is the Tourt wherein all Testaments be proved and all Administration ons granted, where the party dying within his Province bath bona notabilia. in some other Diocesse then where he dieth, which regularly is to be to the baine of 5 1. but in the Diocelle of London it is

in full Parliament, that the Rot. Par. 16 R. s. The Bishops, Lords and Commons a Bing.his beirs and fuccestors might lawfully ae their Tellaments, and that nu.10. not in erecution chall be done of the fame, whereof fome boubt was made before. See Print. Rot. Par. 1 H.5.nu. 13. the Testament of Iting H.4. and his Executors refused, the Archbishop of Canterbury was to grant Administration with the Testament annered to the fame. See 1 H. 6. nu. 18, the last Will and @recutors of H.s. 10 H.6.nu.27.

When the king is made an Crecutor of the last Will and Testament of any other, the King both appoint certain persons to take the erecution of the Will upon them against whom such as have cause of suit may bring their Action) and appointeth others to take the Account. See Rot. Par. 15 H.6. Katherine Ducen Rot. Par. 15 H.6. Dowager of England, mother of H.6. made bestaft Will and Testament, and thereof constituted Bing H. 6. her sole Grecutor. And thereupon the Bing 1436. apud Berappointed Robert Rolleston, Clerk, Beeper of the great Wardzobe, John Mer- mondiey. flon and Richard Alreed Elquires, to execute the faid Will by the overlight of the Cardinall, the Duke of Blone', and the Bithop of Line', or of two of them to whom they thould account.

The Probate of every Bishops Testament or granting of Administration of his goods, although be bath not goods but within his own jurisdiction, both belong to the Archbishop.

The like Court the Archbishop of Posk hath.

From this Tourt the Appeal is to the King in Chancerp. Row touching the furteniction of this Court, and the Confictories of Bishops, te. fuch points as have been indicially refolmed, are necessary to be remembred, both for the lafety of the Judge, and the benefit of the party interested.

Obiit a Junii *

If a man die intestate baving bona norabilia in divers Diocetes, the Judge of this Court hathused to asset a convenient sum to be imployed in pios mus, but with these limitations following: 1. It must be after Administration granted, and the Inventory made and returned, to the end the Estate of the Intestate may be known. 2. The Administratory before any assessment must be called to it, to the intent the Judge may be informed of the true state of the Intestate, and of dischildren and kinced, so; whose succour and relief there is great piety. The 3, the assessment must be in particular, how much, to whom, and to what use. 4. There must a publique Ad be made of it before any payment be made. 5. Payment must be made according to the Ad, Lastly, the Judge ought not directly or indirectly to take any thing thereof to his own use, nor so; the assessment thereof or entring the publique Ad, and if he doth, it is Erforetion.

Mich 20 Jac, in Camera Stellata. And Termino Mich. 20 Jacobi Regis. Sir John Benner Audge of this Court, for not observing of these rules was sentenced in the Star-chamber for Exfortion, and fined at themey thousand pounds, imprisoned, and disabled ever after to bear an office, as by the sentence appeareth. And the like orders and rules must be observed in all respects (saving the timo source) in commutation of penance, which two source doe not concern this matter. And these rules as well concerning assessments in piosusus, upon granting of Administrations, as so, commutation of penance, may serve so, the direction of all the Dedinaries and Andreas in Ecclesiastical Louris in England.

Mich.6 Jac. Reg. Rot. 1301. in CommuniBanco.

See the 3 part of the Instit. Cap. Extortion.

See the A&.

" Note this.

See the words of the Act at large.

There was an Ad made Anno 21 H.8. concerning fees for probate of Laft Wils and Tellaments, and granting of Administrations. In the case of James Rowfe Commiffary of the Archdeacon of Buntingdon , in an Information as gainst him by Edmond Neale, for Ertortion upon the faid statute of 21 H.8. inhereunto be pleaded not guilty, and was found guilty, the point in question upon the Information was, if the Probate be not written upon the Testament it felf, but upon the Aranscript ingrossed, whether the taking of a fee by the Defendant for the ingroffing were within the faid fatnte . And it was upon be bate in open Court resolved by the Chief Justice, and the rest of the Justices, Daniel, that such a see taken so, the ingrosent the Act is in the Aegative. And if the Eestament, he must agree with him, that Walmfly, Warburton, Foster fing was within the statute, Crecutor request any to inc be so request (02 * bring one ready ingrosted with him as he did in the case in que ftien, which is a fate and ready way) but the Dedinary or Commissary ought not to grad a fee for it of the party as a fee due to him, for divers causes. First, for that the words are expresse for the the Probation,&c. or for Registring, Sealing, writing, prailing, making of Inventories, &c. which word (writing) extends to this cale. Secondly, the words be, or any thing concerning the same Probate, and when the Seal and Probate is put to the Transcript this concerns the Pro: bate, to the Probate is not put to any other writing. Thirdly, if fuch a confirm gion thould be made, that this case is out of the fature, this beneficial law Monito be illusory and vain, for if the Dedinary or his Commissary might take what he would for the ingroffing by his Clerks as a fee due to him, the Ad Could be of none effect; and the manner of the precise penning of the Act and the certainty of the fees, and not above, would be all in pain. And the Didinary, if he will, may anner the Pobate to the Teltament it felt, as feeing be can have no other fee then is in the Hatute. it may be hereafter he will doe: but for the mifreciting of the Act of 21 H.8. in the Information, Curia advisare vult : and this resolution extending to all Courts of Eccletiafficall jurisdiction that have Brobate of Testaments, we thought it necessary to make a memoriall of it.

The Court of the Arches of the Archbifhop of Canterbury.

This Court is called Curia de Arcubus, and bath been anciently belben in Boto Church of London. Jos I read of it in a Record of a Brobibition Termino Hil coram Rege Anno 7 E. 1. Rot. 8. in Curia Christianitatis coram Decano de Arenbus London, DI Bom Church in London, where the Court bath continus allo been kept, which and 12 other partities in Landon, whereof Bow is the chief, are within the peculiar jurifoiction in spirituall causes of the Archbithon of

Canterbury, and grempt from the Bilbop of London.

The Indge of this Court is called the Dean of the Arches, unto inhole officialty in Spirituali cantes to the Archbithop of Canterbury is annered the peculiar jurifolation of thele 13 Barifbes. De bath ordinary jurifotation in Spiritus all canfes of the first instance, & by Appeal through the whole Brobince of Canterbury, as it appeareth by the Catute of 24 H.S.cap. 12. Dis poiner to call any perfor for any cause out of any part of his Probince in the Dioces of any other, unleffe tt be upon appeal, is reftrained by the fatute of ar H. 8. cap. 9. This Court in the flatute of 25 H.8. cap. 19, is called the Court of the Arches, on Au-Dience of the Archbishop of Canterbury: and from this Court of the Arches the Appeal is to the King in Chancery by the faid Ac of 25 H.8.

Hil.7 E 1.coram Rege Rot.8. Pafch 12 E.1. in Banco, Effex. Gulielmus de Mortuo mari Clericus Acc. Sce Dier 7 Eliz. 241.

24 H.8.cap 12. 1 Eliz.cap.1. 21 H 8.cap.g. 25 H.8.cap.19.

The Court of Audience. Curia Audientia Cantuariensis.

This Court is kept by the Archbishop in his Palace, and medleth not with any matter between party and party of contentious jurifoldion, but Dealeth with matters pro forma, as confirmations of Bilhops elections, confecrations, and the like, and with matters of voluntary jurifolation, as the granting of the gardianship of the spiritualties fede vacance of Bishops, aboutsion and institutie on to Benefices, difpenting with Banes of matrimony, and fuch like.

The Court of the Faculties.

This is also a Court, although it holdeth no plea of controverse (like the Court of Audience next before.) It belongeth to the Archbishop, and his Difficer is cal- 21 H.8.cap. 13. led Magifter ad Facultates. And his power is to grant Difpenfations, as to S Eliz.cap. 16. marry, to eat fleth on dayes prohibited, (and fo map every Diocelan) the Sonne to fucceed his Father in his Benefice, one to have two or more Benefices incompatible, ec. It is called Faculties in the Statute of 28 H.S. which in one fense fignifieth a dispensation. So as facultates (in this sense) dispensationes & indulta are fynonyma.

This authority was raised and given to the Archbishop of Canterbury by the fratute of 25 H.8. cap.21. whereby authority is given to the faid Archbifton and his fuccestors to grant Difpensations, faculties, ec. by himself or his sufficient and substantiall . Commissary of Deputy for any such matter, whereof heretofore fuch difpensations, faculties, to then had been accustomed to be had at the See of Rome, or by authority thereof. - This Branch of this Act you wall find pleaded

Lib. plac Co. pag. 512.513.

b Concerning the power of the Archbishop to grant Dispensations to any to eat field on Fridares, Saturdages, Embring dages, Aigils, and Lent, the fame is limited by the statute of , Eliz. cap. s. And the penalty of , Eliz, in that case is diminished and made lesse by 35 Eliz. cap. 7. Aote the statute of 5 Eliz. concerning eating of fleth on Wednes dayes is repealed by 27 Eliz. ca. 11. which Act of 27 Eliz. is affirmed by the Act of 35 Eliz. and by 21 Jac. cap. 28. and er: prefly by the statute of 3 Caroli cap. 4.

Vi.18 H.8.ca. 16

 Commonly called the Mafter of the Facultues. a Trin.44 Bliz.in Com. Banco. Rot. 1525.lib.4.f.117. Lib.pl. Co.pr. 512 b 2 E. 6. cap. 19. 5 E.6.cap.3. See the third parc of the Inftir.cap. Diet.pag. 100. gEliz.ca, g. 35 Eliz.cap.7. 27 Eliz.cap.11. Lib.pl.Co.371. 27 Eliz.ca.11. Carolica.4. Vid.35 Eliz.c.7.

Curia

T Curia Peculiarium. The Court of Peculiars.

The Archbishop of Canterbury hath a preculiar jurisdiction in divers partities within the City of London and other Diocesses, ec.

The Confistory Courts of the Archbishops and Bishops.

Sce Lit. Sect. 133. 136. 648.

24 H.4.cap. 12.

Rotelauf.30 H.3 m.4. mandatum est Thom. de Stanford,&c. Ro..Pat.13 E.1. m.21.Rex licent, dedit Episcop. Bangor,&c. * It is faid that this was given by the Bishops being secular persons Eccles afticular for all the secular Clergy.

The Confistory Court of every Archbishop and Bishop of every Dioces in Ecclesiastical causes is holden before his Chancelour in his Cathedrall Church, or before his Commissory in places of the Dioces far remote and distant from the Bishops Consistory, so as the Chancelour cannot call them to the Consistory without great travell and veration: and he is called Commissories for anew. From these the appeal is to the Archbishop of either Province respectively: when Consistories of Archbishops and Bishops began within this Realm, see here to be to Chapter of the Courn of the Sherisse.

It appeareth by many Records in the reigns of H.3. and E.1. (as taking fome one or two examples for many) that by the law and cuftome of England no Bishop could make his will of his goods or chattels comming of his Bishop ick. ec. without the kings license. The Bishops that they might freely make their Wille, pelided to give to the Bing after their deceales respectibely for ever Six things. 1. * Their best Horse of Palfrey with bridle and saddle. 2. A Cloak with a Cape. 3. Dne Cup with a cover. 4. Dne Bason and Civer. 5. Dne Ring of gold. 6. His kennell of Hounds. For thefe a Writ illusth out of the Erchequer after the decease of every Mithop: For example, Rex &c. Vic' Eboru. Przeipimus tibi, quod non omit' propter aliquam libertatem, quin eam ingred' & distring' omnes executores testamenti & ultima voluntatis reverendissimi in Christo patris Matthai nuper Archiepiscopi Eborum defunctisae administratores & occupatores bonorum & catallorum quæ fuer'dicti nuper Archiepiscopi, nec non hared' & tenent' terrarum & tentorum qua nuper sua fuer' per omnes terras & catalla sua in balliva tua. Ita quod nec ipsi nec aliquis per ipsos ad ea man' appon' donce al' inde tibi praceperimus. Et quod de exitibus earundem terrarum nobis respond', & quod habeas corpora eorum coram Baronibus de Scaccario nostro apud Westm' à die Pascha in tres septimanas ad respond'nobis de uno optimo equo five palfrido cum cello & frano. Una chlamyde five cloca cum carella. Uno cipho cum coopertorio. Una pelve cum lavatorio five aquar'; & uno annulo aureo, nee non * muta canum quæ nuper fuer' ejufdem nuper Archiepiscopi tempore mortis sua; & qua ad nos ratione prarogativa nostra spectant & pettinent, & de precio sive valore inde, unde nobis nondum est respons. Et habeas ibi tunc nomina executorum & aliorum prædict'& hoe Breve.

The most ancient of this kind that we find and remember (but certainly there were such Writs before) is inter Memorand' de Scaccario, Anno 2 E.2. the Bishop of Bathe and Wels case. Tr. 36 E.3. ibid. Inc. comia. the Bishop of Theorems case. Hil. 5 E.4. ibid. adjudge upon demurrer, that the duty being to the Ring after the decease of every Bishop, it extendeth to an Archbishop, the Archbishop of Posks case. to every Archbishop is a Bishop. It is sometimes called makura 03 mulctura de Episcopis, sometime monurier, &c. The King by verdit of twelve recovered ten thousand sparks against the Bishop of Postvich for that he prosecuted against the Abbot of School admonds Bury to appear before him against the Kings Prohibition, for which it was adjudged that his temporalties should

be feifed, and his body taken,

* Apon consideration had of the statutes of 3 R.2.7 H.4.1 H.5. & Ror. Parl. 6 H.4. nu.48. & 4 H.6. nu.29. If any Alten of stranger bosn be presented to a Benefice, the Bishop ought not to admit him, but may lawfully resule him: which we have added, so, that the Abridgements of late Impressions may deceive you.

* Muite des Cheins of muit cometh muta, signifying & Kennell. Int.com. de Hil. 2 E.2. in Scaccar. Proces vers. Episc. de Bath & Wels.

Mic.19 E.3.coram Rege.Rot. 157. Norff. Tr.21 E.3.Rot. 170. coram Rege 11 E.3. fo.60. 3 R.2.cap.3. 7 H.4 cap.12. 1 H.5.cap.7. Rot. Pall.6 H.4. Eu.48.

The Court of the Arch-Deacon, or his Commiffary.

This Court is to be holden where and in what places the Arch Deacon ci. 24 H. 8.00p. 12. ther by prescription or composition hath jurisdiction in spiritual causes within his Archdeatoury. And from him the Appeal is to the Diocelan. De is called

Oculus Episcopi.

In some Ads of Parliament and many Records and Histories you thall reade of the Bithops Pall, Pallium Epitcopale. It is a Bood of white Mooll, to be worn as Dodors boods be upon the thoulders, with four Croffes woven into it, ac. the form and colours whereof you may fee in the Book De antiquitate Britannica Ecclefia pag.r. for a Ball is the Arms belonging to the See of Canterbury, and therefore expreded there, and commonly in other places.

Palla est vestis qua Altare cooperitur, viz. ut lineus pannus consecratus qui

fuper Altare ponitur, super quem extenditur Corporale.

The Clergy petitioned in Parliament, that of every Confultation conditio: nall, the Dadinary may of himfelf take upon him the true understanding thereof, and therein proceed accordingly.

Whereunto the Bings answer was, That the King cannot depart with his right, but to yeild to his subjects according to law. Notaboc, & finde bene.

vid. Callaneus 4 part. Catalogi glorix mundi fo. 103.3. 16 Con ideratio, ubi lega ,fi p'acer, multa de pal-Vocabuler jaris.

Parl gi E.t. nu.8 ;.

I The Court of Delegates and consequently of Appeals.

It is to bulgarly called, because these Delegates do lit by force of the kings 25 H.8. co. 19. Commission under the Ozeat Seal upon an Appeal to the Bing in the Court of Chancery in three causes. First, when a fentence is given in any Occiesiasticall cause by the Archbishop or his Dificiall. Secondly, when any fentence is giben in any Eccleliafticall cause in places erempt. Ebirdly, when a fentence is giben in the Admirall Court in fuits civill and marine by the order of the Civill lam. And thele Commillioners are called Delegates, because they are delegated by the Kings Commission for these purposes.

Pow because we have generally spoken of Appeals in Ecclesiastical causes. which are grounded upon Ads of Parliament, it thall be pertinent to our purpose to let bown the resolution of the Indges, and of the learned in the Occletiafticall law, which both famme up in what causes, from what Courts, and in what fime Appeals are to be made, and other necessary incidents concerning the same, as the Lord Dier under his own hand bath reported, but are left out of the print, a pet worthy to be known and published, which you thall hear in his own words and language.

C Of Appeals.

First, in cases Testamentary, Matrimony, and Tithes, from the Archdeacon Appeals. Anno 02 his Dfficiall, if the matter be there commenced, to the Bithop of the Dioces, 24 H.S. ca.12. and from the Bithop Diocelan or his Commissary in fuch case, or if the matter be there commenced, within fifteen dapes after fentence given, to the Archbiftop of the Province, and no further.

Item, from the Archdeacon of Committary of the Archbishop, if the matter be there commenced within fifteen dayes, te. to the Audience of Arches of the laid Archbishop: and from thence within other fifteen bayes, sc. to the Archbishop himfelf, and no further. And if the cause be commenced before the Archbishop, then to be there definitively determined without further Appeal.

Item, where the matter toucheth the Iting, the Appeal within fifteen dayes to the next pag.

See intra, this is altered by the flatute of is H.8.in 25 H.8.cap.19.

Wide Supr. pag.

parcedent.

Cap. 74.

be made to the higher Convocation house of that Province, and no further, but finally to be there determined.

A generall prohibition, that no Appeales Chall be pursued out of the Realme

to Rome, oz elfewbere.

Item, a generall Clause that all manner of Appeales, what matter soever they concern, shall be made in such manner, some and condition within the Realm, as it is above ordered by 24 H.8. in the three Causes asoresaid; And one surther begree in Appeales sor all manner of Causes is given, viz. from the Archbishops Court to the King in his Chancery, where a Commission shall be awarded sor the determination of the said Appeale, and from thence no surther.

Item, that persons exempt thall likewise pursue their Appeale in the Chance-

rp, ut fupra, and not to the Archbishop.

Pote, in case where a sentence is given by Commissioners delegates by the Prince, as by the late Tissions, Anno 1 Eliz, the party grieved appealing, such appeale is out of the Drivers prescribed by the said Statutes, and the Prince in that case may grant a new Commission to others to determine that Appeale. Et ceo suit sait per lopinion del plusors des Justices en le case de Goodman deprive del Deanery de Wells.

Nota, Stephen Gardener Evesque de Winton, suit deprive al Lambeth per Commission del Roy E 6. fait a 10 persons proceeding sur ceo ex officio mero mixto vel promoto omni appellatione remota summarie de plano, absque omni

forma & figura judicii, sola facti veritate inspecta.

Et vide Mich. 3 & 4 Eliz. Coueney President del Novel Colledge in Oxon' deprive per le Evesque de Winton, Visitor del dit Colledge, & exempt de tout jurisdiction ordinary, sait appeale al Roy in son Chancery, & Commission illong; grant a A. Browne & Weston Justices, que sur conference ove auters Justices & Civilians, resolve que le appeale ne gist, ne ascun auter remedie pur le appellant pur ceo que cesti case suit hors del dit Statute de 24 & 25 H. 8, car cest deprivation est mere temporall, & come p ley prov. Ex quo sequitur, que une assis gist, &c.

Nota, in appellis per Doctorem Lewes Iudic' Admiral' & al' &c. Forasmuth as an Appeale is a naturall befence, it cannot be taken away by any Prince or power, and in every case generally when sentence is given, and appeale made to the superior, the Judge that did give the sentence is bound to obey the appeale, and proceed no surther untill the superior hath examined and determined the cause of appeale. Peverthelesse where this clause (appellatione remota) is in the Commission, the Judge that gave sentence is not bound to obey the appeale, but may execute his sentence, and proceed further, untill the appeale be received by the superior, and an Inhibition be sent unto him: sor that clause (appellatione remota) bath three notable effects. The first is, that the jurisdiction of the Judge that gave sentence, is not by the appeale suspended or stopped, sor he may proceed, the same notwithstanding. The second, that sor proceeding to execution or surther process he is not punishable. The third, that those things that are done by the said Judge after such appeale cannot be said boid, sor they cannot be reversed per viam pullitatis.

ap.8.
Mat.Par.pa.97.
*Rot.claus.in
dors.anno 8 H.3.

but if the appeale be just and lawfull, the superior Judge ought of right and equity to receive and admit the same, as he ought to do justice to the subjects.

And so if the cause of the appeale be just and lawfull, he ought to reverse and redormand 8 H.3.

boke all meane Acts done after the said appeale in prejudice of the appellant.

Thus far the Report of the Lord Dier truly translated.

*At the Parliament holden at Clarendon called Assis de Clarendon Anno 10 H.2. cap. 8. the somes of appeales in causes Ecclesiasticall, are set down within the Realm, and none to be made out of the Realm. Ne quis appellar ad dominum Papam, 'Rex agrè tulit appell' ad Papam in cause Bastardia, ut contra dignicatem Regis de Consilio igitur (the Record speaking in the person of the Ring) magnatum & sidelium nobis assistent vobis mandamus, sirmiter injungentes quatenus non obstante appellatione pramissa non disteratis pro eo sententiam, &c. So as the first Article of the Statute of 25 H. 8, concerning the

. .

This cafe is in print, Dier fo. 209.4.

"Parliam.at Clarendon 10 H.2. cap.8.
Mat.Par.pa.97.
"Rot.clauf.in dorf. anno 8 H.3.
Part. 1.m. 29.
Rex Dublin Archiepifc. &c.
Rot. Parl. 18 E. 1.
Rot. 1. William de Valentia. &
Rot. 3.00.59.
Wil. de Martingham acc.
See Hovenden fol. 284.

p:ohi-

prohibition of Appeales to Rome is declaratory of the ancient Law of the

And it is to be observed, that the first attempt of any appeale to the Sec of * Hayward Do-Rome out of England was by Anselme Bithop of Canterbury, in the reigne of Gor of the Civil William Rufus, and pet it took no effect.

See 3 Eliz.cap. 5. an appeale in Civill and Marine causes before the Lord Ad. mirall. rc. a fentence befoze Commiffioners belegates is finall.

See before pag. 125. upon a fentence given by the Conffable and Marthall proceeding by the Civil Law in causa Amorum, there lyeth an appeal to the Bing, but none of the faid fratutes extend to this kind of appeale.

Dee Ror, cl. Anno 30 H. 3, part. 2. m. 11. de Appellatione pro Rege fac' in electione Abbatiffæ de Shaftesbury.

and Canon Law in the life of William 2. 8 Eliz cap.g.

The Court of the Commissioners of Review, Ad Revidendum.

Albeit the faid Ads of 24 H. 8, and 25 H. 8. do upon certaine appeales make 24 H. 8 abi fupr. the fentence definitive as to any appeale, for the words be [fhall be definitive] 25 H. 8. ubi fupr. and that no further appeale foodlo be had; pet the Bing after fuch a definitive fentence, as supreme Head, may grant a Commission of review, ad revidendum, &c.fo2 2.caufes. 1. For that it is not restrained by the Statute. 2. For that after a definitive fentence the Pope as Supreme bead by the Canon Law used to grant a Commilition ad revidend': And fuch authority as the Pope had, claiming as suppeme head, both of right belong to the Crowne, and is annered thereunto by the Statutes of 26 H.8. cap. 1. and 1 Eliz.cap. 1. And fo it was refolbed in the Binas Bench Trin. 39 Eliz. where the cale was, that fentence being giben in an Tring Eliz.in Ecclefiaficall cause in the Country, the party griebed appealed according to the faid Act of 25 H. 8. to the Archbithop, befoze whom the first fentence was affirmed. Whereupon according to the Statute of 25 H. 8. he appealed to the Delegates: before whom both the former fentences were repealed and made boid by befinitive fentence, and thereupon the Queen as supreme bead granted a Commillion of Review, ad revidend' the fentence of the Delegates. And upon this matter a Prohibition was prayed in the King Bench, pretending that the Commillion of Review was against Law, for the e fentence before the Delegates was definitive by the Statute of 25 H. 8. But upon mature deliberation and debate the Prohibition was denged, for that the Commission for the causes above: faid, was refolbed to be lawfully granted. In this cafe I being then the Ancens Attorney was of Counsell to maintain the Queens power. And presidents were cited in this Court in Michelots cafe, Anno 29 Eliz. and in Goodmans cafe, and Huers cafe, in 29 Eliz, alfo. See the Statute of 8 Eliz, cap, 5, and obferbe like woods in that Statute, ut fupra.

Apon a fentence given by the Digh Commissioners, a Commission of Re. The High blew may be granted to and for the party grieved, as by an expedie clanfe within Commission, that Commission appeareth. And if no such clause had been therein, pet a Commillion of Review might have been granted. Quia ficut fontes communicant aquas fluminibus cumulative, non privative; sic Rex subditis suis jurisdictionem communicat in causis Ecclesiasticis vigore Statuti in hujusmodi casu editi & pros

visi cumulative, non privative, by construction upon that Ad.

Le Court des Conservators des priviledges de St. Iohns de Jerusalem, &c.

There were two Courts holden coram Conservatoribus privilegiorum, the one Hospitaliorum, and another Templariorum. Df whole jurisdiction, and of their reftraint to grant any general Titations prinfquam exprimatur fuper qua re

the Kings Bench. Hollingworths cife. Lib. Intr. Raft.fol. 16.Appeale to Rome. 1b.Rome 389.

W.z.cap.43.

fieri debeat citatio, & si viderint hujusmodi conservatores quod peratur citatio de aliqua re cujus cognitio spectat ad forum regium, hujusmodi conservatores nec citationes faciant nec cognoscant, as by the statute of W.2. appeareth.

Dee the Second part of the Inflitutes, the Expolition upon that ftatute.

The Templers were distributed in 4 E.2. and the Pospitters in 32 H. 8. so as these Courts are determined.

How for a conclusion concerning England, I have referved to fay somewhat for the honour, and supream Estate of both the Relatives of our Soveraign Lord the King, and of this his kingdome, which I conceive to be necessary to that which in this part of the Institutes we have taken in hand, for that it graceth and strengtheneth all the rest.

24 H.S.cap.12.

By the tohole Parliament of 24 H. 8. wherein, balloes the Archbishops and Bishops of the Realm, there were 29 Abbots and Priors Lords of Parliament: It was resolved, and so declared by an Act, That by divers and sundry old antique Histories, and Chronicles, it is manifestly declared and expressed, that this Realme of England is an Empire, and so hath been accepted in the world, &c.

But against the truth hereof, opposition hath been made. First, that this is the only Parliament that hath affirmed it. Secondly, that this Declaration is unjust and untrue, and that Pistory or Chronicle both not affirm the same.

As to the first I answer: that one Act of Parliament is instar omnium, being a proof of the unanswerable and highest nature, but this is not the only; so; so much in effect (as to this point) is affirmed by all the Lords Spirituall & Temporall, and the Commons by Authority of Parliament long before the reign of H.3, that the Crown of England hath been so free at all times, that it hath been in no Earthly subjection, but immediately subject to God in all things touching the regalty of the same Crown, and to no other.

Bublique Botaries made by the Emperoz claimed de jure to exercise their offices here in England, but because it was against the dignity of a suppeam

Ling, they were prohibited by the kings writ.

And long before, these by the ancient law of the Crown of England, were but to the Ming. Omnis quidem sub rege, & ipse sub nullo, sed tantum sub deo. (Et ibidem paulo post codem numero) Ipse autem rex non debet esse sub homine, sed sub deo. &c.

And therewith agreeth the Defore the Conquest. Rex autem, quia Vicarius summi regis est, ad hocest constitutus, ut regnum terrenum, & populum domini, & super omnia sanctam veneretur Ecclesiam ejus & regat, & ab injuriosis

defendat, & maleficos ab ea evellat, & destruat & penitus disperdat.

And long befoze that Anno 169. à passione Christi dominus Eleutherius Papa Lucio regi Brytanniz scripsit, ad petitionem regis & procerum regni Brytanniz, petistis à nobis leges Romanas & Czsaris vobis transmitti, quibus in regno Brytanniz uti voluistis: Leges Romanas & Czsaris semper reprobare possumus, legem dei nequaquam. Suscepistis enim nuper miseratione divina in regno Brytanniz legem & sidem Christi, habetis penes vos in regno utranque paginam, ex illis dei gratia per consilium regni vestri sume legem, & per illam dei patientia vestrum reges Brytanniz regnum, Vicarius vero dei estis in regno, & c, and bighet I cannot que.

And by the way it is to be observed in the severall grants by Abbots and Prisons made to king E. 4. they severally file him by these very words, Supremus

Dominus noster E.4.Rex.

And by thise other Ads of Parliament, viz. by the statute of 25 H.8.cap. 21. inherein by Authority of Parliament it is enaded and declared (directing their Declaration to the Bring) That this your Graces Realm recognizing no Superior under God but only your Grace, hath been and is free from subjection to any mans laws, but only to such as have been devised, made and ordained within this Realm for the wealth of the same, or to such other, as by sufferance of your Grace and your progenitors, the people of this your Realm have taken at their

Vid.ftat.de 28. cap.2.in Hibernia.

Stat. de 16 R.3. cap. 5. An. domini 1392.

Rot. Claus. i 3 E. s.

Bracton who wrote in the reign of H.3.
Lib.1.ca 8.nu.5.
Anno dom.1270.
Int. Leges Edovardi cap.17.
An. dom. 1050.

Anno dom. 169.

22 E.4. MU-19.

25 H.S.ca,31.

free liberty by their own confent to be used amongst them, & have bound themfelves by long nie and custome to the observance of the same, not as to the obfervance of the laws of any forain Prince, Potentate, or Prelate, but as to the cuflomed and ancient laws of this Realm originally established as laws of the same, by the faid sufferance, consents and custome, and none otherwise.

And by the flatutes of 25 H.S.cap.21. 1 El.cap.1. and 1 Jac. cap. 1. the Crown 15 H.S.cap 21.

of this Kingdome is affirmed to be an Imperial Crown,

As to the second: I might answer that Le Court de Parliament est de tref- 1 Jac. cap. 1. grand honor & Justice, de que nul home doit imaginer chose dishonerable. And Dott. & Stud. fo. with the Doctor and Stydent upon the Statute of 45 E.3.cap. That it cannot 164.cap 55. be thought that a fatute that is made by the Authority of the whole Realm as well of the King, and of the Lords Spirituall and Temporall, as of all the Commons, will recite a thing against the truth.

But to be thoat, thing Edgar Atled and Subscribed himself in his Charter, Ba- The like Charter fileus, Imperator & dominus, which you may read in the Beface to the Fourth to the house ot

part of mp Reports, Vide Rot. Pat. 1 E.4. parte 6. m. 23.

Edward commonly called St. Edward fon of hing Edgar in a Charter which he made to the Abby of Ramsey (which I have) filed himself, Ego Edwardus

totius Albionis Dei moderante gubernatione basileus.

Another Charter of Ling Edwine to the Abby of Crowland infituled, Carra regis Edwini filii regis Edmundi fratris regis Edgari deterris in Jeckelea. Wither. in he is felled Edwinus Anglorum rex & totius Brytannica telluris gubernator

& rector, and many others.

To conclude this point with a late and learned writer, whom I will cite for that be agreeth with the former Authorities, be faith, that the regall effate and book incitaled, dignity of a King is of two manners. The one is Imperiall of Supream, fuch a The glary of geneone isour Soveraign Lady Elizabeth by the grace of God Queen of England, 19/17.p.140,141. France and Ireland, which Doberaign Queen holbeth ber Empire and Bingdomes with her people and Subjects immediately of the Lord of Beaven and Earth, without any other mean feguiozp or attendancie of corporall or bodily fervice of allegiance to any other worldly Prince of Potentate, madgre the head of either her forain enemies or intestine and homeborn traiterous ballals, and also from her sentence (the and we all her faithfull and logall subjects acknowledging to her effate no Superfour lyeth no Appeal.

There is also a King, and he a Homager of Feudotary to the Chate and Pas jefty of another King as to his superior Lord, sc. As that of Pavarand Portugall to the King of Castell: the Kingdomes of Granado and Leons to Aragon: the Kingdomes of Lombardo, Sicill, Paples and Bobemia to the facred Empire: the old kingdome of Burgundy, and now the late ereded title of the king of

Arles, to the King of the French men; and so forth of the reft.

The King which is Supream and Imperiall is equivalent within his Land Note. to the power and authority that Telar can challenge within his own Dominions, and fuch a Bing challengeth of right to fet upon his head a " Crown Imwith a Diademe elevated on high to lignific the perfection and greatnesse of their periall. effate; but to the other kings homagers a Crown not elevated is due. And that we map (as duty is) both with reverence and dutifull fear differn and judge the office and function of our Soveraign to be most holy and facred; let us fee with what honors a foveraign King (fuch a one as is her Dajetty) is illustrated and made redoubted to his lubjects, first, what areat Majetty, honoz, power, and glo. With what Majerp is intended by fetting a Trown upon her head, for in the reberend and maje. By crowned. Micall action of Coronation, the is first anointed, then blested, after that confecrated; to lignific unto her and unto us that the is of God, that her power is from Chiff, and that the is to rule over Chiffian people: the Crown fet on her head is called triumphant, and it is of gold to lignific her erellent Pajeffp; it is cal. A Crown triumled triumphant by reason that the like Crown in fathien and form was given the Phant. Emperours and Captains of the Romans in their triumphs over Bings and Pations. This Crown triumphant is most due to her excellent Pajetty even

i theap.i.

L'onnington by King Edgar.

I.F. of the Inner Temple, in his

Bartholomans.

by the Arica course of laive of Arms, Ance that her Ancestors have triumphed over many kings and mighty people, as H. 1. over five kings of Ireland, E.1. triumphed over the Socottish and Welsh Rations. E. 3. and H. 5. both of them over France. In the triumphant Crown of our soveraign Lady there be placed (not only so; the ornament of her regall Diademe, but also to fignific the Princely vertues of a king) twelve Gems or stones of precious esteem.

And for this kingdome of England, the other part of the Relative, hear what

an ancient Woet bath faid.

Anglia gens fortis, & fertilis angulus orbis:
Iniula prædives quæ toto vix eget orbe,
Et cujus totus indiget orbis ope.
Anglia plena jócis, gens libera & apta jócati,
Libera gens, cui libera mens, & libera lingua;
Sed lingua melior liberiorque manus.

The Answer to certain objections against the Kings Stile of Defender of the Faith.

This Bull you may fee in Speeds Chronicle, p. 759. nu. 41. Anno dhi 1521.13 H.8. See Laert. Cherub, Bullar. tom. 1.p.26.619.

35 H.cap.3.

And where some doe object that the bing our soberaign Lord ought not de jure to enjoy the title and file of Defender of the Faith, Defenfor fidei : foz(fay ther) Dope Leo decimus, Anno Pontificatus fui, by his Bull granted the fame to in the H.S. & posteris suis. Well, veritas à quocunque dicitur, à deo est. But then lay that by the Bull of Pope Paul the third , against King H. 8. upon his funpreffion of the leffer houses of Religion in Anno 27 H. 8. be did not only depose him of this title, but of his Crown allo, and gave his kingdome to him that could get it: which far we, was done de facto, fed non de jure; and we confesse also that by colour of that Bull, Pope July the third in his Bull to king Philip & Ducen Mary his direction was Charistimis in Christo filis nostris Philippo regi & Mariz reging illustribus, wherein he omitted the title of Defendo; of the faith: but belides the Popes Bull, which (as it feemeth) is countermandable at his pleafure, the thing bath a furer right thereunto to this file, for by the full content of all the Lords Spiritual and Temporall and the Commons assembled in Parliament, and by Authority of the same, in A nno 35 H.8. it is enaced, that all his spajefties subjects thould from thenceforth accept and take his Pajefties file as it is declared and let forth in manner and form following, that is to fap, in the Latin tongue by thefe woods; Henricus octavus dei gratia Anglia, Francia, & Hibernia Rex. fidei defensor & in terra Ecclesia Anglicana & Hibernia supremum caput, and in the Englith tongue by thefe woods; Henry the eight by the grace of Bod king of England, France and Ireland, Defender of the faith, and of the Church of England, and also of Ireland, in Carth supream head: and that the faid Kile Chould be from thenceforth by authority aforefaid united and annered for ever to the Imperiall Crown of his Highnesse Realm of England. Hereunto it is objected, that this Act of Parliament is repealed by the Act of I Mar.but that is miftaken for as the treafons made and enacted by fubliquent clauses of the said Act of 35 H.1. are repealed by the Act of 1 Mar. but the ftile and title of the Croive without question remaineth of force unrepealed; and accordingly Ducen Mary in all her feberall Seffions of Parliament befoze her martage and after her mariage, the and thing Philip used the file and title of Defender of the faith in all their Parliaments, Letters Patents, sc. according to the faid Act of 35 H. 8. and by the way the used the title also of Supremum Caput in the second Section of her Parliament in the first year of her reign. And by the resolution of the Judges in anno 1 Mar, it appeareth that the statutes of 26 H. 8. cap. 1. & 35 H. 8. cap. 3. concerning the file of the King remains in force, for thereupon did the question bepend : fo as albeit Pope July in his Bull bouchfafed not to give Bing Ph. & D. Mary their file of Defender of the faith, pet both the before, and both of them after their mariage, according to their right took it upon them not with franding the thanding Bull of Pope Paul the third. Laftly, all the Kings and Aucens

1 Mar. Dier 94.

Ducens regnant of England babe at their Coronation time out of minde been fwom to befend the faith, and therefore were of common right Defenders of the faith : by reason of which Dath they may take upon them the file, and are more

firmely bound to perform and do it, then by the Popes Bull.

Having woken of England, and of the pety Islands and Dominions of the fame, and intending to fpeak of that noble Island and Mingdome of Ireland, I could not palle over that ancient and renowned is ingdom of Sectiand wholly in filence, but as it were to falute it by the way, and vet to abbe formelibat, which none that have written of that kingbom have (to my remembrance) touched.

CAP. LXXV.

Of Scotland.

Oncerning this kingdome there are many things worthy of observation. 1. That thefe two mighty, famous, and ancient kingboms, viz. England and Scotland (I wie the words of the Act of Warliament) were anci: 1 Jac. Regis co.t. ently but one.

Vide 4 Jac.ca.10

& 7 Jac.cap.1.

2. That one Religion and fervice of God is holden and celebrated by both. 3. That as there is one language in both. fo there was one kind of government and one law in ancient time that ruled both with many unanimous agree: ments between them, which evidently appeareth by many proofs. First, that the 11 Jac. Regisc.1 Laws of Scotland are divided as the Laws of England be into the Common laws, Ads of Warliament, and Cultomes. Their Common laws are principal-In contained in two Books. The first called Regiam Majestarem, because it heginneth (as Julinians Inftitutes do) with thefe woods [Regiam Majeftarem.] The second Book is called Quoniam Accachiamenta, because it beginneth

& z. in Ireland.

with those two words.

The first Book doth in substance agree with our * Glanvil, and most coms the perswasion & monly de verbo in verbum, and many times our Glanvil is cited therein by freciall name.

procurement of Sir W.ll. Stanford a grave and lear.

ned Judge of the Common Pleas Anno Dom. 1554. 1 & 2 Ph. & Mar. Of whom hear what Hovenden faith An, Dom. 1180. (& regni H. 2.26.) Henricus Rex Angliz pater conflicuit Ranulphum de Glanvilla fummum Inflitiarium totius Angliz, cujus sapientia condita funt leges subscripta quis Anglicanas vocamus. This Hovenden lived in the reigne of H.z. and died in the time of King John. See Pl. Com. 368. b. per Catlyn in Epift. to the eight Book of Reports.

Secondly, the Trown of Scotland is descendible to the Daughter of Heir Female where there is no tilue spale. If there be many Daughters or heirs female, it descends to the cloeft. Likewise they have the like descents of lands to Subfeds as England have as none can inherit in the right Line ascendant. The elbeft Daughter bath iniciam partem. All the Daughters of Subjects Do inherit.

Thirdly, they have the Digh Court of Parliament, as we in England have, Parliament, and called by the fame name, confifting of the fame Members, viz. Lords Spiris tuall, Loads Temporall, and the Commons. It is fummoned and called at the Binas pleasure for a certain time. When they meet, the Bing or his Thancelor theweth the causes of calling them together. But there of later times the 1020s Spirituall bo choose eight Tempozall Lozds, and the Lozds Tempozall choose eight Spirituall Loads. Thefe firteen make choice of eight chofen for the Couns ties, and eight of Cities and Burghes, in all, thirty two. But whatfoever is agreed upon by them, the Bing both allow or difallow by moving of his Scenter, ec.

Fourthly, they have the same degrees of Pobility, as Dukes, Marquelles, Carls, Alfcounts, Barons, tc.

fifthly, they have the same great Officers, as Chancelour, that keepeth the Great Seal, Lord Treasurer, Lord Privy Seal, Secretary, 4c.

Sirthly,

Sirthly, and the same Ministers of Bustice, as Sheriffs, Cozoners ec.

Seventhly, the same laws for the most part quarto modo appropriated to England, viz. Tenant by the curteste, because they had the same law that England had. Eighthly, the like Writs, Brevia, as de Recto, Assis of Novel Diffin', Mor-

dane's De gard, De Ideot' inquirend', De divisis fae', Replegiar', Attachm', &c.

Pinthly, they agree with Magna Carta concerning Wardhips, sc.

Aenthly, with Carta de foresta cap. 11. for it is lawfull or Bishops, Carls, and Barons comming or returning through the Kings Forests at the Kings command to kill one or two Beasts in the sight of the Forester, or otherwise in his absence to blow his Porn, that he appear not to take it thievishly.

11. The Lord of fuhom the land is holden by lanights ferbice per antiquius

feoffamentum thall have the warothip of the body.

12. The Sheriffes thould cause the Acts of Parliament to be proclaimed, ec. All which, and many more are the ancient laws of both kingdoms, as it appeareth in the said Books of Regiam majestatem, & quodiam attachiamenta,&c.

13. The Sheriffes there have an inheritance in their Office, as sometime

in England they had, and get in Cumberland they have.

14. The same Mocables of art are used in the laws of both Kingdomes, as Ordelinm, i. the Court of Water and Iron, Filius mulieratus, Marchetum, Sers plaith, 02 Sorpler, Iudicamenta, &c. Machameum 02 Mahemium, Murdrum 02 Murcharum, Chancemeley, Mote, Misericordia, Messuagium, Flightwight, Medletum, Remanere, Manerium, Recognitio per Affiam, Pipoudres, Pannagium, Ora, Nonclayme, Soc 02 Sok, Serjanteria, grand Serjanty, pery Serjeanty, Sectator a Suiter, Sheriffs of inheritance there, the Sheriffs Court of County Court, Toll, Tunbrellum of Tumbrellum, Thainus, Soccage, Burgage, Servicium militare, Relief oz Relieve, Them & Teme, Theftbote, In libera Eleemofyna, Terrz Dominicales, Liberum tenementum, Vidiare duellum, Warrenna, 02 Varenna, Valvafores 82 Vavafores, Waif, Strap, Caftleward, Veredicum, Viridarii. Infangthief, Dutfangthief, Dutlaway, Dutlawed Justice in Gire, Waeck of the Sea, Mouther, Vicenetum, Hamfockne, Hida terra, Bovara terra, Heriot 02 Heregeld, Hutefium of Huefium, Regrateurs Forestallers, a Builde, fallifping of booms of recovery, Quarentena, Felonia, Feodum, Homage, Fealty, Effroverium, effonium, enitia pars, Difparagement, Diffetions, Difclaimer, Scaccarium, Collistrigium, Champertie, Maeremium, Averia, Caralla, Bote, Bloodwite, Brand Affile, Affile of novel diffin', Barettors, Affidabit, Abjournment, Refponfals, Attornies, and many others.

There was an Deptarchy in Scotland but now a Monarchy. There are there two Archbithops, the one of S. Andrew, the other of Glasco: S. Andrew bath

eight Bithops under him, and Glasco three.

There are there thirty Counties og Sherifdoms.

The ancient spotto of the Bing of England is, God and my right (intilligitur) shall me defend. Of the Bing of Scotland, In my defence God me defend.

There are also two famous Universities, one in S. Andrews, theother in

The length of Scotland from Twede to the uttermost Coast is 480 Piles: it is longer then England, but narrower, and endeth like a Wedge.

Di ancient time all the K thops of Scotland were facred, and confirmed by

the Archbithop of Book.

But by reason of their Acts of Parliament, which in many points have altered, diminished, and absogated many of the old, and made new laws and other proceedings: the distinct Kingdoms as they now stand have many different Lawes.

Par. 3. Jac. 1 ca. 48 11 Martii Anno Dom. 1425. Item, It is ordained by the King by consent and deliverance of the three Estates, that all and singular the Kings Lieges of the Realme live and be governed under the Kings laws and statutes of the Realm allanerly: and under na particular laws, nor special priviledge, nor be na laws of uther Countries nor Realms.

Item, It is statute and ordained, That all our Soveraigne Lordis Parl Jacobi 4. Lieges beand under his obeifance, and in speciall the Isles be ruled by cap-79. 11-Martii our Soveraigne Lordis awn laws and the Common laws of the Realm. and be nane uther laws.

Bing James at his Barliament holden Anno 1. of his reigne, endeaboured to 1 Jac, cap. 2. have made an union of both thingbomes, and to have erected a new thingbome of Great Britain. And thereupon authority was given to certaine Commiffio. ners of the higher and lower Boufe of Parliament, to treat with certain Commillioners of Scotland for and concerning an union of both kingdomes. Amongst thefe Commissioners there grew a question, whether there could be made an union of the Bingdomes by railing a new Bingdome of Breat Britaine, before there was an union of the Lawes. Which question by the Kings commandment was referred to all the Judges of England in Trintty Terme. Anno 2 Jac. who unanimoully refolved (3 being then Attorney generall, and prefent) That Anglia had lawes, and Scotia had lawes, but this new ereach kingdome of Britannia thould have no law. And therefore where all the judiciall procees bings in England are fecundum legem & confuerudinem Anglia, it could not be altered fecundum legem & consuctudinem Britannia, untill there was an union Vid fupra p.36. of the lawes of both Kingdomes, which could not be done but by authority of Barliament in either Bingdome.

Anno 3 Ja.ca. 3. An Ad made for things to be done by force of the fait Ad of

1 Ja,cap. 2. in any other Sellion of Barliament.

Anno 4 Ja,cap. 1. A repeale of hoffile lawes and of hoffility between England and Scotland, ec. And it is enaced, that no Englithman thall be fent out of England into Scotland for any offence done in Scotland, untill fuch time as both Realmes thall be made one in lawes and government. So as the resolution of the Judges was approved by Parliament. See a Proclamation 20. Octob. 2 Ja. concerning the Bings file of Bing of Breat Britaine, wherein all judisiall and legall proceedings, sc. are excepted.

I never read of any union of divided Ringdomes, and therefore I conceive it to be without president. And in this union many things would fall into constberation, and those of great weight, other then the union of lawes, though that be a maine one: As for example, the severall Crownes are descendible to seberall hegres of blood. And question may be made who should be begre of this new

Bingdome.

But the learned Poet hath found out an union without danger, directing his berfes to Bing James.

> Cum triplici fulvum conjunge Leone Leonem Ut varias Atavus junxerat ante Rofas. Majus opus, varios fine cade unire Leones, Sanguine quam varias confociasse Rosas,

Tahofoeber is befirous to know fuch Mifcellanea as we have observed concerning Scotland, let him reade thefe Records and Authorities following.

The Records of Parliament from the beginning thereof, for the receivers and treers of Detitions in the Lords house, Rot. liberat, anno 3 Ed. 1. m.2. per Johannem Lovetot, Rot. paten' anno 20 Ed. 1. Gilberto Comiti Glovornia & Hereford. Scotia.Rot, Parliament. 21 Ed. 1. inter placita Rot, 1. & 2. Hovenden 1 194. pag. 7. carta Regis R. 1. Mat. VVefim, anno Dom, 1 260. pag. 302. H. 3. Rot. Scotiz 21 E. 1. Carta F. 1. & Ira Alexandri Regis Scotiz. Rot. Vasconiz 25 E. r. m. 2.3.in dors. Trin. 25. E. I. coram Rege Rot. 6. Norff. Rafe de Tonyes case. Anno 29 E.t. If a quas Rex per le & quas Comites & Barones Anglia per le milerunt Domino Papa anno 29 E. I. authoritate Parliamenti, que irrotulate funt etiam in Scaccario. Vid.VVallingham 48.8 49.

Rot. pat. 24 E.1. Episcopis Scotia, Mich. 33 E. 1. coram Rege Rot. 127, Sco- glir, &c. Papa.

* Ex instrumenço Lib Hofp, Sandi Leonardi in Com. Eborum. Egbert Rex in Parliamento apud Wintoniam mutavit nomen Regni de consenfu populi fui, & juffic illud de cztero vocari Angliam. Ifte Rex Egbertus obiit Anno Dom.673. See a Proclama tion 15.Septemb. 1603.2 /1.

Ror.Parl.apud Linc. 29 E. 1. Anno Dom. 1300 Literz omnium Nobilium Antia, Rot. Parl. 35 E. I. in brevi de Parliamento, & auter 1 E.2. 1 E.3. fo. 17. Grayes case. 6 E. 3. 18. The Abbot of Crowlands case. 9 E. 3.6. John Darcyes case. Rot. pat. 10 E.3. 2. ps. Comes Arundel. Rot. Parl. 14 E.3. nu. 15. flat.4. Rot. clauf. 22 E.3. & 23 E. 3. breve de Parliamento magnifico Principi, &c. 22 Aff. p.85. 39 E.3. fo. 35. Rot. Parliament. 42 E. 3. nu. 7. 42 E.3. fo. 25. 8 R. 2. tit. Cont. elayme.pl. ultimo. 13 H.4, fo. 5, Rot. pat. 2 H.5, part. 3,m.1. 8 H.5, fo. 5, 32 H.6. 25. 20 E.4.6.b. Litt. fect. 100, & 165. 1 part of the Institutes, Stat. de 2 & 3 E. 6. cap.36. Fortescue cap.13. Pl. com. 126. Dier manuscript 3 Eliz.22.b. & 13 Eliz. fo. 68.m., Dier 12 Eliz. fo. 287, in print. Lib.7, fo. 22,23, &c. Calvyns cafe. Lib. 9. fo. 114. Seignior Zanchers cafe. See before in the Chapter of the Digh Court of Parliament.

Hiftorix.

Hollingth. 1 part.fol. 116,117, 2 part, 286, Stowe 202, Pelidor. Virgil. Matth. VVefim. 428,425,443,444,445. VValfingham 17,28,32,129.&c.

Thus have you all which we have observed in our reading concerning this matter, and which the benevolent Reader may perule at his pleasure; to whose censure we wholly refer the same. Multi multa, nemo omnia novit.

Don bave observed, that those of Scotland do agree with us in language, and as hath been faid, differ in lawes. On the other fide, the Subjects of Ireland differ from us in Language, and agree with us in Lawes, and therefore of them

we thall fpeak fomewhat the moze at large,

Bede in History of England lib. 1. Redshanks.

Amongst variety of Authors from whence this noble Pation of the Scots oziginally came, we follow Menerable Bede in his Diffozy of England, lib. 1. cap. 1. and also from whence the * Picts originally came. And there you thall reade, that the Picts ariving in Britania planted themselves in the north parts thereof, for the Britains had taken up the South part before. And whereas the Dids babing no wives oid require the Scots to mary their baughters, the Scots agreed to grant them their boone, under condition, that as often as the matter was in doubt, they thould choose their king rather of the next of the boule of the woman then of the man.

Cap. 13. And that Palladius in the eighth peare of Honorius the Emperour, Anno Domini 411. was fent by Celettinus Bithop of Rome to the Scots that had recet. * Et lib.2.cap.4.

bed the faith of Chaiff, to be their first Bisbop.

" That the Scots do nothing differre from the Britains in their convertation.

Beda in his Hiftory of England, lib.I. cap.11. Vid.fupr.p.157.

With these famous king domes have found by wofull experience, that unwife and incertaine making of leagues, greatly indamageth the Commonwealth, and the fatall banger of fuch leagues to the Princes themselves.

CAP

CAP. LXXVI.

Of the Kingdome of Ireland.

of Justice there, for that they have the same which we have in England, and the same Law, saving, where some that have written of them have in some maine points mistaken the matter; we will convince the same by direct matter of Record, and we intend to adde some things which are necessary to be known, which no man that both written of that Country hath vouched, or if they have remembred the same, it is with so light a touch, as much is omitted out of the Record, or case resolved it selse, worthy to be known, which we intend to supply for the honour of the Ling, and benefit of his subjects there. And the rather, so, that I have been insormed by many of them that have had judiciall places there, and partly of mine owne knowledge, that there is no Pation in the Christian world that are greater lovers of Justice (whereof we shall principally treat) then they are, which vertue must of necessity be accompanied with many others; and besides they are descended of the ancient Britaines, and therefore the more indeared unto us.

First, concerning the Parliaments of Ireland, being the highest Court there, where some have supposed that the same beganne in 17 E. 3. we shall make it appears by matter of Record, that when not only king Iohn, as all men agree, but H.2. also the sather of king Iohn, as before it hath appeared, and in the nert page shall be touched, did ordaine and command at the instance of the Irish, that such lawes as he had in England should be of some and observed in Ireland: bereby Ireland being of it selse a distinct Dominion, and no part of the kingdome of England (as it directly appeareth by many Authorities in Calvins case) was to have Parliaments holden there as England; and thereupon in the reigne of King Iohn himselse a Parliament was holden there, as by this Record ensuing appeareth.

Rex Comitibus, Baronibus, Militibus, & liberis hominibus, & omnibus aliis de terra Hibernia, Salutem. Quia manifeste esse dignoscitur contra Coronam, or dignitatem nostram, & consuetudines, & leges regni nostri Anglia, quas bona memoria Dominus Fohannes Rex,pater noster, de a communi omnium de Hibernia consensu teneri statuit in terra illa, quod placita non teneantur in Curia Christianitatis de Advocationibus Ecclesiarum & Capellarum, vel de laico feodo, vel decatallis que non sunt de testamento vel matrimonio. Vobis mandamus, prohibentes quatenus hujusmodi placita in Curia Christianitatis nullatenus sequi prasumatis in manifestum dignitatis & Corone nostre prejudicium, scituri pro certo, quod si feceritis, dedimus in mandato Justiciario nostro Hibernia, Statuta Curia nostra in Anglia contra transgressiones hujus mandati nostri cum justitia procedat, & quod nostrum eft exe natur. In cujus, &c. Tefte Rege apud Winchcomb 28. die Octobris, Anno Regni nostri decimo octavo. Et mandatum est Justiciario Hibernia per literas clausas, quod pradict' literas patentes publice legi & teneri faciat. But as true it is that the father of Bing Iohn, viz. H. 2. when he had conquered Ireland, fent that Treatife, intituled, Modus tenendi Parliamentum, in a faire Warchment Roll, for their better holding of Parliaments there, which you map reade more at large before Cap. The High Court of Parliament, p.12,

1 Jacobi cap 1. & 11 Jac.&c.cap.1. &6.in Ireland. Vid.the 1 part of the Institutes, Sect.212.

Parliaments in Ireland of ancient time.

* Pag.12.

Rot. Ann. 18 H.3 m.17.nu.21. See the first part of the Institutes Sed.212. a Nota, Rex de communi omnia confenfu(ac communi confilio teneri flatuit) is by Act of Parliament. b Nota[omnium] that all received the Lawes, &c. Many things in thefe Letters Paof observation.

Rex Henricus 3. Anno regni sui 12. mandavit Justiciario suo Hibernia, ut convocatis Archiepiscopis, Episcopis, Baronibus & Militibus ibidem coram eis legi faciat Cartam Regis Johannis; quam legi fecit, & jurari à Magnatibus Hibernia de legibus & consuetudinibus Anglia observandis, & quod leges illas teneant & observent.

Rot.pat.30. H.3.

Quia pro communi utilitate terra Hibernia, & pro unitate terrarum, provisum est, quod omnes leges & consuctudines que in regno Anglia tenentur in Hibernia teneantur, & eadem terra eisdem legibus subjaceat, ac per easdem regatur, ficut Fohannes Rex cum illic effet * statuit, & firmiter mandavit. Ideo volumus quod omnia Brevia de Communi Jure que currunt in Anglia Smiliter currant in Hibernia sub novo Sigillo Regis. Teffe, &c. Apud Woodflock.

Coram Rege Mich-33 E.1. Kot.124.Hibernia.

. Nota.

Major Dublin, qui querebatur verf. The faurarin Scaccarii Dublin, & verf. Barones Scaccaris de gravaminibus per ipsos illatis, remistitur Parliamento, & inde buc: cui per Curiam dictum est, quod gravamina sua proponat, qui dicit quod non adhuc est consultus, super quo dies datus est. Ad quem diem nullas proposuit querelas, Ideo committitur Turri London, & finem fecit Domino Regi.

Sometimes the king of England called his Robles of Ireland to come to his Warliament of England, tc. And by speciall words the Parliament of England may binde the Subjects of Ireland, as taking one example for many.

10. Octobris Rex affectans pacificum statum terra Hibernia, mandavit Ricardo de Burgo Com' Viton' & aliis Nobilibus terra pradicta, quod fint ad Parliamentum suum quod summoneri fecit apud Westm' in Octabis Sancti Hilarii prox' ad tractand' ibid cum Proceribus, &c. regni fui super fatu terra pradicta.

An excellent president to be followed, when soeber any Act of Parliament Chall

be made in England, concerning the fate of Ireland, ec.

Rot. Parl. 35 E.3 izrot.fic.

Rot. Parl. 8 E.z.

m 31.

Anno 35 E.3. De Consilio summonit' pro ter' habentibus in Hibernia, Maria Comitissa Norss.

Aelianora Comitissa Ormond. Jana la Despenser, Philippa Com. de la Marche, Johanna Fitzwater,

ad mittendum fide dignos ad solloquium.

a Rot. Parl anno Agnes Comitiffa Penbroke, 10 E 2. Margareta de Roos, Rot.clauf. 10 E.z. Matildis Comitissa Oxonia, m.38.& Rot. clauf. 12 E 2. m.3. Catherina Comitissa Athol. a De Parliamentis singulis annis in Hibernia tenendis, & de legibus & con-(netudinibus ibidem emendandis.

Hereby it appeareth that there were Parliaments holden in Ireland before this time, and other taken at this Parliament that they thould be holden every peare, and the like Ads were made in England in 4 E. 3. & 36 E. 3. for Parlia ments to be holden in England.

b In Octabis Sancti Martini apud Nottingham Rex de consensu communis Consilii (ui fecit certas ordinationes pro reformatione status (ui Hibernia, de ministrorum Regis ibidem.

· Volumus & pracipimus quod nostra & terra nostra negotia, prasertim majora & ardua, per peritos Consiliarios, ac Pralatos, & magnates, & quosdam de discretioribus hominibus in Parliamentis tractentur, discutiantur & terminentur.

Annales Hiberniæ Anno Dom. 1309.2 E.2. Parliam.tent.apud Kilkennie per Com Ulton.& Johannem Wagan. Justic. Hiberniz & Magnates,&c. bRot. Parl. 17 E.a 1.part.pat.anno prædict.m.3. c Inc. Ordinatio. nes pro statu Hi-

betniæ anno

. &cc.

17 E.3. in Turri,

Vid. Lib. Album

in Scaccario.

Diverse Acts

here made concerning Ireland,

and transmitted

thicher to be in-

rolled in the Chancery there. 25 H.8.cap. 12.

F.N.B 178.1.

Anno 10 H.7. Poynings law.

12 R.3.12.

This Dedinance doth regulate the Parliaments in Ireland according to the inftitution and end of the Parliaments in England, as in the Wirit of Parliament, which is to confer and treat De arduis & urgentib' negotiis nos (i, Regem) & statum & defensionem regni & Ecclesia Anglicana concernentibus; the effect tobereof is contained in the Didinance of 17 E. 3. but that Dedinance both not ered any Parliament there, as some have (without any colour) supposed.

Dee 20 H. 6, fol. 8. which began Mic. 18 H.6. Rot. 45.coram Rege, & 2 R. 3.

fo. 12. See before in the Chapter of the Digh Court of Parliament.

And feeing good and profitable Ads of Parliament made in the Realme of England fince the reign of King John ertended not into Ireland, unlesse it were specially named or by generall words included, - as within any of the Kings Dominions , a right profitable Ad was made at a Parliament holden in Ireland in Anno 10 H. 7. before Sit Edward Poynings then Deputy of Prorex in Ireland, and thereupon called Poynings law.

Whereby it is enacted, That * all statutes late made within the * Note. Realm of England concerning or belonging to the common or Publick weale of the fame, from henceforth be deemed good and effectuall in the Law, and over that be accepted, used, and executed within this land of Ireland, in all points at all times requisite according to the tenor and effect of the same. And over that by the authority aforesaid, that they and every of them be authorifed, proved, and confirmed, in this fame Realm of Ireland. And if any statute or statutes have been made within the faid Land heretofore to the contrary, that they and every of them by the authority aforefaid be adnulled, revoked, and made void, and of none effect in the law.

And Hil. 10 Jacobi Regis, it was refolbed by the two Chief Zustices and Thief Baron, that this wood [lare] in the beginning of this Act had the fense of [before | fo that this Act extended to Magna Carra, and to all Acts of Parliament made in England befoze this Act of 10 H. 7. But it is to be observed that such Ads of Parliament as have been made in England fince 10 H.7. wherein Ireland is not particularly named or generally included, ertend not thereunto, for that albeit it be governed by the same law, pet is it a diffind Realm of Ising. bom, and (as hath been faid) hath Parliaments there.

Vide Bracton lib. 5. fo. 395. b. Temps E. I. Voucher 239. 14 H.3. flat de Ho- Books concernmage, 13 E. 2, Bastardy 25, 7 E.3.9, 8 All. 17. Britton fo, 1. a. 45 E.3, 19.Tr. 29 E.1.coram Rege. 10 E.3.41.42. 11 H.4.7. 8R.2. Proces 224.3 H.7.10. 7 E.4. 27. Pl. Com. 368. 13 Eliz. Dier 303. 20 Eliz. Dier 360, Lib. 7. Calvins cafe.

I part of the Inflittutes Sect, 95.

How and in what manner a Parliament is to be holden in Ireland, and how Bils ought to passe in the same.

The Lords of the Councell directed their Letters to the two Chief Buffices Hil. 10 Jacobi

and Thief Baron in these words.

After our hearty commendations to your Lordships. Whereas his Majesty for divers weighty considerations hath resolved to hold a Parliament in the Realm of Ireland, and that by an Act made in the tenth year of H. 7. called Poynings Act, it is provided that all fuch Bils as shall be offered to the Parliament there shall be first transmitted hither under the Great Seal of that Kingdom; and having received allowance and approbation here, shall be put under the Great Seal of this Kingdom, and so returned thither to be preferred to the Parliament: foralmuch as there are accordingly transmitted hither from thence di-

Parliaments in Ireland holden at this day.

Regis.

3 & 4 Ph. & Mar.

Cap. 4.

vers Bils as well publick as private, some of which Bils were first agreed on here, some others were framed and conceived there, and comming now hither may happily receive amendment or alteration: we have thought meet for avoidance of any question or inconvenience that may arise of the manner and form of proceeding in amending or altering of these Bils, hereby to pray and require you, calling to you his Majesties Attorny and Sollicitor to look into Poppings Act, and to consider of some such course as shall be fit to be held concerning the same, &c.

Dated Vltimo Ianuarii 1612.

Afterement in this Tearm the fair Thief Indices and Thief Baron, and the Attorny & Solicito; were assembled two severall dayes at Serjeants Inne, and had consideration not only of the said Ad of 10 H.7. cap.4. but of the Ad of 3& 4 Ph. & Mar. cap.4. Intituled, An Act declaring how Poynings Act shall be expounded and taken.

For by the faid Act of 10 H.7. it is provided that no Parliament be hereafter holden in the faid Land of Ireland, but at such season as the Kings Lieutenant and Councell there first do certifie the King under the Great Seal of that Land, the causes and considerations, and all such Acts as them seemeth should passe in the same Parliament, and such causes, considerations, and Acts affirmed by the King and his Councell to be good and expedient for that Land, and his license thereupon, as well in affirmation of the said causes and Acts, as to summon the said Parliament under his Great Seal of England had and obtained. That done, a Parliament to be had and holden after the forme and effect afore rehearsed. And if any Parliament be holden in that Land contrary to the form and provision aforesaid, it be deemed void,

Sur quel Act divers doubts & ambiguities fuer' conceive & ascuns de eux

fuer' de greinder difficulty que auters.

and of none effect in Law.

1. Et primerment un doubt fuit conceive le quel le dit Act de 10 H.7. extend al successors le Roy H.7. intant que l' Act parle solement del Roy generalment & ne' de ses successors. 2 si le roigne Marie suit deins cest parol Roy. Et coment que ceux ne suer matters dascun ambiguity, car cest parol Roy que import son politique capacity ne unques mort, & esteant parle indefinite extend in ley a touts ses successors, uncore ceo est issint expound per le dit Act de 3 & 4 Ph. & Mar. Et que le dit Act de 10 H.7. extendra to the King and Queens Ma esty, her Heirs and Successors.

2. On le Act de Poyningt dit (the Kings Lieutenant and Councell there) scruple fuit conceyve, si le Roy appoint un per nosme de le Deputie, ou Lord Iustice, ou sil constitute 2 Lords Justices, chief Governours or Governour, & le Councell, &c. Et quant a ceux est explane per le Act de 3 & 4

Ph. & Mar. que le dit Act de Poynings extend a tout ceux.

3. Le greinder & pluis difficult doubt fuit sur ceux parols in lact de Poynings. And such causes, considerations, and Acts affirmed by the King and his Councell to be good and expedient for that Land, &c. Le quel le Roy poet fair ascun change ou alteration des causes, considerations ou Acts que serr' transmitt icye del Lieutenant & Councell d'Ireland, car ceo nest pas affirmation mes correction & alteration de eux. Et pur ceo suit necessary destre explane, que Lact de 3 & 4 Ph. & Mar. fait in ceux parols. Ei-

her

ther for the passing of the said Acts, &c. in such forme and tenor as they should be sent into England, or else for the change and alteration

of them, or any part of the same.

4. Auter question suit sur les parols del primer Ait. sc. That done a Parliament to be had and holden, &c. si a mesme le Parliament auters Aits que suer afsirme ou alter icy poent estre enactes per authority del Parliament la. Le quel est explaine per le dit darrein Att in ceux parols, for passing and agrecing upon such Acts, and no others, as shall be so returned under the Great Seal of England.

5. Grand doubt fuit conceive sur les ditz parols (that done a Parliament to be holden) le quel le Lieutenant & Councell d'Ireland apres le Parliament commence la, & pendente Parliamento poient sur debate & conference la, transmitt ascun auters considerations, causes, tenors, provisions, & ordinances come sembles a eux bone destre enact a mesme le Parliament deins le Realme d'Ireland, le quel est explane per le dit Act de 3 & 4 Ph. & Mar. in

expresse parols, que ils poient, erc.

Nota Lecteur lorder del proceading & sommons del Parliament in Ireland. Primerment le Lieutenant & Councell la doient certefier de south le Grand Seale d'Ireland le causes & considerations de toutz tielz Aits come semble a eux bone a paffer en Parliament, isint que le original covient a commencer la. 2 Ils covient destre affirme ou alter & change & retorne de south le Grand Seale Dangliterre. 3 Licence desouth le Grand Seale a sumoner & tener un Parliament. 4 A transmitter Billes pendente Parliamento come appiert devant. Et fuit auxi resolve una voce. 1. Que les causes, considerations, & Billes transmitte icy desouth le Grand Seale d'Ireland doient destre custodie & preserve icy in le Chancery d'Angliterre, & ne remaunde. 2. Silz soient affirme, ilz doient destre transcript desouth le Grand Seale & retorne in Ireland, & tout ceo que passe le Grand Seale doiet destre inrolle icye in le Chancerye. 3. Si les Acts transmitt icy soient in ascun part alter ou change icy, lacts ifint alter & change doient come en un continent destre retourne defouth le Grand Seale Dangliterre a ceux in Ireland, tout quel doit destre inrolle icy in le Chancerye Dangliterre. Mes le transcript desouth le Seale d'Ireland que le remaine in le Chancerye icy, ne serra amend, mes l'amendment serra desouth le Grand Seale Dangliterre come est avandit. 4. Les amendments ou alterations icy ferr' come est avandit retourne in Ireland sans ascun fignification ou certificat dallowance de ceux per ceux de Ireland, car sicome les Acts movent originalment de Ireland, isints les amendments ou alterations movent icy in Angliterre. 5 Touts les Bils que sont transmitt icy de Ireland sont ove le petition del Deputye & Councell le Roy touts ensemble desouth un Grand Seal d'Ireland. 6. Touts les Bills que sont affirme ou alter icy soient retourne ensemble desouth un Grand Seale D'angliterre.

And thus much concerning the Parliaments of Ireland.

The case of the Earl of Shrewsbury upon the statute of 28 H.8. of Absentees.

28 Martis Anno domini 1612.

Per force de certain Letters Patents de 28 Martii 1612. del seigniours del Privy Councell direct al Sir Humfrye Winche, Sir James Lea, Sir Anthony Sentleger, & James Fullerton, ilz certifiont aux seigniors le claim de Guilbert Countee de Salop aux dignities del Countee de Waterford & Barony de Dongarvan in Ireland come ensuift. Le Roy H. 6. per ses Letters Patents Anno 24 de son reign granta a son treschier cosin John Countee de Shrewsbury in consideration de ses approved & foyall services in le City & County de Waterford in Ireland, pro eo quoque quod per eundé consanguineum nostrum prædicta terra nostra Hibernia in partibus illis contra hujusmodi inimicorum & rebellium nostrorum insultus potentius defenderetur, ipsum in Comitem Waterford una cum stilo & titulo ac nomine & honore eidem debitis ordinamus, præficimus & creamus Habendum, al dit Countee, & ales heires males de son corps. Et oustre per mesme les Letters Patents granta les Castles, seigniories, honors, terres & barony de Dungarvan al dit John Countee & a les heires males de son corps, les premisses destre tenus del Roy & ses heires per homage & fealty, & le service destre seneschal a son Majesty in le Realm d'Ireland. Puis al Parliament (communement appelle des Absentees) tenus al Dublyn in Ireland, 1 Maii, An. 28 H. 8. fuit enact (per reason del long absence del George Countee de Salop hors de mesme le Realm) que le Roy, ses heirs & assignes avera & enjoyera indroit de son Corone d'Angliterre touts honors, mannors, Castles, seigniories, franchises, hundreds, liberties, County Palatines, Jurisdictions, annuities, fees des Chivaler, terres, tenements, &c. et touts & singular possessions, hereditaments, & touts auters profits cibien Spirituall come Temporall, quecunque queux le dit George Countee de Shrewsbury, & Waterford,ou ascun auter person ou persons a son use avoient, &c. Le Roy H. 8. per ses Letters Patents, Anno 29 de son reign recitant le dit statute de Absentees, Nos præmissa considerantes et nolentes statum, honorem, & dignitatem prædicti Comitis diminuere, sed amplius augere, ex certa scientia, & mero motu,&c. Granta al dit Countee & ses heirs l'Abby de Rufford ove les terres a ceo perteynant in le County de Nottingham, & le seigniory de Rotheram in le County de York, les Abbeys de Chesterfield Shirebroke & Glossopdale in le County de Derby ove divers auters terres & tenements de grand value destretenus in Capite, & les questions fuer'.

1. Le quel per le longe absence del Countee de Salop hors de Ireland per que les Roys & subjects wanted lour defence & assistance la, enconter le expresse consideration del creation, le title del honor est perdue ou forfeit, le dit

Countee esteant Pier del ambideux Realms, & residing icy.

2. Le quel per le dit statute des Absentees, Anno 28 H. 8. le title del dignity del Countee de Waterford soit prise del dit Countee de Shrewsbury cibien come les mannors, terres, tenements & auters hereditaments in mesme Latt specifie.

Et puis per auters Letters des seigniours del Councell, 27 Septemb. 1612. les deux Chief Justices & Chief Baron fuere require a consider del dit case (que fuit enclose deins lour Letters) & a certifie lour opinions de ceo.

Quel case fuit argue per Councell erudite del dit County devant les dit Chief Justices & Chief Baron, sur que ilz presteront advisement (apres que

ilz ont divers foitz lye le Preamble & tout le dit Act de 28 H. 8.) jesque a Term de St. Mich. Anno decimo Jacobi Regis, & donques fuit unement resolve per eux come enfuift.

Quant al primer fuit resolve, que intant que nappiert que ascun defence fuit requisite, & que le consideration executory nest trove per office destre infreint, ne judgement done in Scire Fac', a cest cause que le dit Countre de

Salop, ceo nient obstant, remain Countee de Waterford.

Quant al 2 fuit resolve, que le dit Act de 28 H. S. des Absentees nad tolle solement les possessions, que fuer done a luy al temps de son creation, mes auxi le dignity mesme, Car coment que un poet aver dignity sans ascuns possessions, uncore ces serroit pleine de inconvenience, & acest cause le dit Act de 28 H.S. (come touts auters Acts doient estre) serra expound douster tout inconvenience, & pur ceo per les generall parols del Act, (sc. des honors & hereditaments) le dignity mesme ove les terres dones ur maintenance de ceo Sont done al Roy, & le dignity extinct in le Corone.

Et est digne de observation le cause de degradation de George Nevill Duke Rot. Parl. 1011. de Bedford, que fuit fait per force dun Act de Parliament, 16 Ianuarii, An- ajud Wettn. no 17 E.4. quel Act reciting the erection and making the faid George Regis E.4.17.

Duke, expresse le cause de son degradation in ceux parols.

And for fo much as it is openly known, that the fato George hath not not by inheritance may have any livelihood to support the faid name, estate, and dignity, or any name of Chate, as oftentimes it is feen, that when any Lord is called to high effate, and have not livelihood convenient to support the same dignity, it induceth great poverty and indigence, and cauleth oftentimes great Ertoztion, Imbracery, and Paintenance to be had, to the great trouble of all fuch Countries where such Estate thall happen to be inhabited. Therefore the Bing by the abvice of his Loads Spirituall and Temporall, and the Commons in this prefent Parliament allembled, and by the Authority of the same, ordaineth, establisheth and enaceth, that from henceforth the same erection and making of the same Duke, and all the names of dignity to the faid George of to John Nevil his father be from benceforth void and of none effect, tc.

Degradacio Gco. Ducis Bedford

In quel Act 3 choses fuer' observe, 1. Que coment le dit Duke navoiet Skin 2007. 529 ascun possessions a supporter son dignity, uncore son dignity ne poet estre tolle de luy sans Act de Parliament. 2. Les inconveniences appiert ou grand estate ou dignity nest pas accompany ove livelihood. 3. Ceo est bone cause a toller le dignity per Parliament, Et pur ceo le dit Act de 28 H. 8. serra expound selonque le generalty del letter à toller tiel inconvenience, Et coment que le dit Countee de Salop soit non solement de grand honor & vertue, mes auxi des grand possessions in Engliterre, uncore ne fuit lentention del Act a continuer luy Countee in Ireland quant ses possessions in Ireland fuer' tolle de luy, mes que le Roy a son pleasure puit conferre cibien le dignity, come les possessions à ascun auter pur le defence de mesme le Realm. Et les dits Letters Patents de Anno 29 H. 8. nad parols a restorer le dignity que Lact de Parliament ad tolle, auxi ne fuit lentent del Roy diminuere statum, honorem & dignitatem ipfius Comitis, sed augere, ceux sont destre entendes des possessions pur maintenance de son dignity, car tant appiert per cest parol [augere] car il increase per mesme les Letters Patents ove exceeding grand bounty le revenues del dit Countee de Salop en Angliterre,quel le roy pense fuit un increase de son state, honor & dignity, isfint son dignity in Angliterre fuit increase ove large possessions in Angliterre in lieu de tout ceo que fuit tolle de luy per Latt de 28 H.S. Et ou fuit object que les generall parols [des

nors & hereditaments Jont explain & qualific per les dits parols relative subfequent (queux le dit George Countee de Salop ou ascun auter a son oeps,) & pur ceone serra entende dascun honor ou hereditament mes dont auters poient estoier seisie al use, & ceo nul poet del dit dignity, & pur ceo le dit Act extendera a ceo. Mes ceo est destre prise reddendo singula singulis, & les parols queux ledit George Countee avoit sont sufficient a passer le dignity, & ove ceo accord le opinion detouts les Justices Dengliterre in Nevils case, sur autiels parols in le statute 26 H.8. in le 7 part de mes Reports, so.33. & 31.

Rot.Par.3 R.2. nu.42. There is an Act made in 3 R. 2 worthy here of remembrance, which never was pet printed. It is enacted, that all manner of persons whatsoever, who have any lands or tenements, offices or other living Ecclesiasticall or Tempoporall within Ireland, shall reside or dwell upon the same. And that all such as have there any Tastles or other Forts, shall softiffe the same and surnish it with men able sor desence, and thereupon also dwell. And if they at any time depart, then during their absence to appoint some able to supply his room, or therwise the Governor to dispose the half of their Living to such desence. See the Act at large, necessary to be put in execution in these days.

Dominus Rex vult & præcipit quod de cætero singulis annis semel in anno compotus Hiberniæ,&c. per Thesaur' Hiberniæ reddatur ad Scaccarium Angliæ, & ibidem audiatur per Thesaur' & Barones suos, A necessary law, and much

for the benefit of the King to be observed.

A long Record touching the custody of the body and lands of heirs within age, wherein these words are contained. Et cum una & eadem lex esse debeat tam in regno Angliæ quam Hiberniæ. Like writs of Error of judgments given in the Bings Bench in Ireland, Mich. 32 E.I. Coram rege. Theobald Verdons case, Breve de errore super bre de errore Rot. 76. Pasch. 30 E.I. Coram Rege Rot. 50. in breve de errore, &c. William de la Rivers case, Et Tr. 33 E.I. Rot. 56. Concordatum est per omnes de Concilio regis, Episcopis & aliis in Hibernia unanimiter, quod consuetudo usitata in Hibernia de bonis testatorum talises, quod ubi, &c.

Prisage vinorum in Hibernia, and the manner of the taking of the same. At a Spnod holden in Ireland by St. Patrick their Apostle, it was unant-

mondy agreed that Irith Priess should have wives.

Tres Petitiones porrect « Regi contra Eliam de Ashburnham militem fusticiar' domini regis in Hibernia de diversis malefactis, &c. per ipsum perpetratis, qui dicit quod non debet tractari, nisi in Hibernia, & ibidem terminari: et quod oportet ipsum dominum regem informari per indictamentum 12 fur' vel per Appellum formatum & Attachiament ad sectam partis secundum legem & consuetudinem regni regis Anglia hactenus usitat'. Curia vult inde advisari, & interimmanucapitur. Postea dominus rex mandavit breve quod caperent manucapt' ad respondendum in Hibernia.

d Admittitur Episcopus Exon' pro sine 200 Marc' pro contemptu in non admittendo prasentatum regis ad Ecclesiam de Southwell, pro quo contemptu omnia Temporalia seisita fuerunt in manus regis, & tunc temporis ante sinem fact vacavit Arichidiaconat Cornubia ratione quod incumbens electus fuit in Archiepiscopum Dublin in Hibernia (temporalibus Episcopi Exon' ad tunc in manibus regis existen') per quod dominus rex recuperavit

vers. Episcopum dict' Archidiaconat'.

In this Record two conclusions are to be observed. 1. Though Ireland (as hath been said) be a distinct Kingdome of it self, yet it is governed by one and the same law that England is. 2. That when the Archdeacon was by the King preserved to a Bishoppick, he had the presentation to the Archdeaconry in respect

Rot. Par. 21 E. 1. Rot. 3. Hibernia.

Trin. 13 E.1. Coram rege Rot 38. in breve de errore Hibernia. Apud Weften'. 22 E. 1. Rot. 5. in breve de errore Int' William de Vefey & P.filium Thoma, & Rot. Parl. 23 E.1. 5 E.z.error 89. 15 E.3.ibid.72. 34 Aff.p.7.Reg. F.N.B.fo.24.c. 11 H.8 Kelw. 202.15 E.3.Record 38. a Pafch.28 E.t. Coram rege Rot. 98.Hibernia. 6 Tr. 33 E. 1.Co. ram rege Rot. 124 Hibernia. c Tr.18 E.3.Coram Rege Rot. Sir Elias Afhburnhams cafe, d Pasch. 24 E.3. Rot.25.Co:a.n Rege.Cornubia. e Bract.li.g.f.195. 7 E.3.9.12 E.3. 41,42.

tent by many authorines. Trin.32

E.s. coram Rege,

Rot.79. Johnde Bonhams cafe.

21 E.3.40. 41 E. 3.5. 46 E.3.12.

6 Eliz. Die: 218.

b Rot. pat. 18 H.

6.pirt 2.m. 24. A Bishop midea

Cardinal.

17 E.3.fo.49.

respect of the Temporalties of the Bishop of Creter Patron of the Archdeacon. rp, and not by any a prerogative. And fo it is, if an Incumbent in Ireland be a Thisis appamade a Bilhop in England,

Ita Bilhop of England be made a b Cardinall, the Bilhopitch becomes boid, and the Bing thall name the fuccestor, because the Bithopricke is of his Da-

· See 45 E.3. 9. upon the repeale of a Ratification of the Incumbent, a Procedendo out of the Chancery here to the Justices in Ireland to proceed in the Quare Impedit brought by the Ling.

I finde an ancient Record touching Ireland necessary to be explained, in these b pl. 48 resolve.

morbs.

d Rex Thesaurario Hibernia, Salutem. Cum Edwardus primogenitus noster terram Hibernia habeat & teneat de dono nostro cum omnibus pertinentiis c 45 E.3. fol o. fuis adeo libere & quiete ficut eam in manu nostra teneremus, per quod cha- d Rot.pat. Auno rißima filia nostra Alianora consors dicti filii nostri Aurum suum tam de sini- Aurum R ginx. bus quam fonte oblatis in terra Hibernia habere debet, ficut charisima consors nostra Alianora Regina Anglia Aurum suum habet de eisdem in regno nostro Anglia: Vobis mandamus, &c. quatenus prafata consorti filis nostripradicti Aurum pradictum de finibns & ponte oblatis, & etiam de quibuscunque aliis finibus pradictis habere factas in forma pradicta. Et hoc &c. In cujus &c. Tefte Rege 29. die Februarii, Anno 52 H.3.

> Land of Ireland by H.2.to his fon John.

By this Record first it appeareth, that, as the law was taken at that day, by The like grant gift of ling H. 3. his cloeft fonne Prince Edward was Lord of the Dominion was made of the and Lordhip of Ireland. Secondly, that albeit the wife of Prince Edward was not Dueene in name, but had the effect of it, therefore the thould have a duty called Aurum Regina, as well as the Queene of England, being but Lady in Ire: land. For abeit the Kings of Ireland were (until the Statute of 33 H.8.) Itiled by e33 H.8.cap.r. the name of Logo of Ireland, get was he supremus, and absolute Dominus, and And so itappeahad royall dominion and authority, and that his Confort was in rei vericate Re-

gina, or elle the could not have had Aurum Reginæ,

Albeit this Royal Dominion and Land of Ireland was of ancient time permitted to be granted de facto to the Bings fonnes before mentioned, yet by the Lain the Ling by his Letters Patents could not grant fo Royall a member of his Imperial Cile to any, no more then he could do of the Bingdome of England. And that both well appeare by this, that when king R. 2. by his Letters Patents created Robert de Vere Carle of Lincolne, and Parquelle of Dublin to be Duke of Ireland, he granted to him for life * totam terram & Dominium Hibernix, & Infulas eidem terræ adjacentes, ac omnia Castra, Comitatus, Burgos, Villas, * Portus Maris, &c. una cum homagiis, * obedientiis, vassalis, serviciis, & recognitionibus Prælatorum, Comitum, Baronum, &c. * advocationibus & patronatibus Ecclesiarum Metropoliticarum & Cathedralium Abbatiarum, &c. constituere Cancellar', Thesaurar', Insticiar', &c. cum regaliis, regalitatibus, libertatibus,&c.& omnibus aliis * quæ ad regaliam nostram pertinent, * eum mero Letters Patents. & mixto Imperio, adeo plene, integre, & perfecte, ficut nos ea tenuimos & habuimus, tenuerunt & habuerunt progenitorum nostrorum aliqui ullis unquam temporibus retroactis. Tenendum per * Homagium ligeum tantum,

s The faid Letters patents were authorized by Parliament, Affeniu Przlatoru, Ducum, & aliorum Proceru,& Communitatis nostra Anglia in Parliamento,&c. albeit it was contra legem & consuetudinem Parliamenti, as before it appeareth, g Ror.par. 9 R. 2. pa.13,14. to affent to any thing to the differiton of the Bing and his Crown. Sed m.2. & Roc. par. novus ifte infolitus & umbratilis honor cito evanuit.

Rot. Par. 13 R.2. nu.21. the Bing by authority of Parliament gave the title of Duke of Aquitaine to his Unclelohn of Baunt, Duke of Lancatter, and it was

reth by this Act that the King and his progenitors had before this A& Kingly juril-diction and Royall authority. f See before Pag. 13, 14.the grant of King John to the Pope declared to be void by the Parliament in 40 E.3. These thus (*) marked cannot be granted by

*Per Hom. ligeu for renant for life could not do other homage. g R.2.nu.g. & 10 by confent of Parliament, and could not be granted by Letters Patents, because it was one of the titles and files of his Royall Crowne. And this also did first begin and end in him.

Aurum Reginz.

But now it is necessary to be knowne what this duty of Aurum Reging is. Therein three things are to be confidered. First, what authority and warrant in Law there is for this duty. Secondly, what it is. Thirdly, what is one thereby. If irit, in Lib. Rub. in Seaccario fo.46. de Auro Regina, where it is faid. that it is to be taken de hiis qui sponte se obligant Regi,&c. This present Re. cord of 52 H.3. Vet. Mag. Carta 2. part. 10.65. Vid. 10 H.3. Stat.de Roteland to the lame effect.

Hil. 4.E. 1.in Scac. ex parte Rem. Reg. Hil-12 E.3.ibid-Rot.3.

part. 1.m.21.

A Record in the Erchequer Termino Hil. Anno 4 E.1. Another there, Hil. 12 E. 3. Rot. 3.ex parte Rem. Regis, and divers other Records in the reignes of R.2. H.4.&c.untill the reigne of H.7.

Rot.clauf. 12.E.3

In Ads of Parliament, viz. 15 E.3. cap.6. 31 E,3.cap.13.

2. In divers of these Records it appeareth that the Queen thould have de sponte oblatis * pro centum marcis argenti una marca auri solvend' per ipsum qui sponte se obligat. And Pasch. 4. Jacobi Regis the Bing did require the two Chiefe Juftices and Chiefe Baron to certifie him what belonged to the Queene to; this duty at this day. And after many conferences, and hearing of Counfell learned on both fides, and view of Records, at last it was resolved by them all. and to did Popham Chiefe Juffice report to the King, that the Duty belonged to the Queene with these foure limitations. 1. It must be ipones, from the subject, and at his pleasure subether he will give it or no, and no right in the Crowne. And therefore fines for offences, for alienations, or the like, are no part of this duty. 2. It must be freely, without any consideration of any grant, sale, or lease of any thing wherein the Bing hath any revenue, effate, or interest. And there: fore Sales, Leafes, Brants of Lands, Tenements, Wardhips, or the like, are out of the same, for there is quid pro quo. 3. It must be sponte super aliqua consideratione,&c. For example, if the subject sponte offer to the Bing for a licence in Mortmaine, or to create a Tenure of himfelle, or to have a Faire, Market, or to make a Parke, of the like, where the ling biminisheth no part of his revenue, state, o; interest, there Aurum Regina is due to the Queene. 4. Df Subsidies, Fifteenes, or any other gratuity of the meere grace or benevolence of the fubicat, there is nothing due to the Queene, and fo it was refolved, Hil.4 E. r. &c. ubi fupra. And so much upon this occasion de Auro Regina.

Rot.Parl. 7 R. 2. nu.61.

A Tainift was successo; apparent under the chiefe Lord or Captaine of every

feberall Country, and was eligible by the Country.

Brehon. The Brith called their Judges Brehons, and thereupon the Brith

Law to called the Bzehon Law.

At a Parliament bolden in Ireland by Howel Duke of Clarence, Lieutenant there, Anno 40 E.3. at Bilkenny, and therefore called the Statute of Bilkenny, the Brebon Law is no Law, but a lewd custome crept in of latter times, and never was the Law of the ancient Britaines from whom they are descended.

Cuttings. Ander that name they comprehend Tallages and Impolitions. Cosheries are prehendinations, when the chief Lord and his retinue, to came to his Tenants boufe, and fed upon their provisions till all were fpent,

Termondlands are the Blebe of the Church.

Erick fignifieth a fine for an offence.

Galloglasses, Equites Triarii qui securibus utuntur acutissimis.

Kernes funt pedites qui jaculis utuntur.

The Prorex there in former times bath beene called Cuftos, Warden, Lieus tenant, Chiefe Juffice, Deputy of Ireland.

These expositions we have added so, the better infruction of him who will reade the Irith Lawes.

words nece fary to be explained. aThane apudBritannos pro viro nobili, aut Regis ministro. 6B ichons Bella-" gines. & Pallament 40 E.z. at Kilkenny. dCuttings. e Cosheries.

Certaine Irish

Termondland.

Galloglaffes. Kernes.

Frick.

Rex, &c. Johanni Marescallo dedimus & concessimus pro Homagio & ser- Rot.pat.9.Johan. vicio suo Marescalsiam nostram totius Hibernia cum omnibus pertinentiss, &c. Habendum sibi & haredibus suis de nobis & haredibus nostris.

nis Regis Johan ni Marescallo, of whom the Lord Morly is descen-Regift. 294.

See the Regitter, that if an Archbithopzick oz Bithopzick in Ireland be bolb, that the Chapter thall fue to the Bing in England to goe to election, and after election made they ought upon certificate thereof made to the king to obtaine his Royall Allent to this election, and thereupon a Warit thall be directed out of the Chancery here, to the Chiefe Justice of Ireland, a; his Lieutenant rehearling all this matter, and commanding him to take fealty of the Bithop, and to reffore him to his Tempozalties. But now the course is in Ireland to make such Witts there in the name of the Bing. But the Bing names the Archbithops and Bi. F.N.B. 169.170. thops there, as he doth in England; and then the Chapter choose him whom the Bing names to them, and thereupon the Wirits are made of course.

And the reason of this change is worthy to be knowne: for the Charter of king a Carta Johannis John for election of Bilhops, tc. extended only to the Bilhops, tc. of England. Regis 15. Jan. a But after that the whole Dominton of Ireland (as well concerning the Church as the Commonwealth) was established to be governed by one Law with the Bishops before Bingdome of England, as is abovefaid, then the course in the Register was were donative by changed, and the fame courfe taken there, as it is in England.

apud novum ondon Ann. 18. the King. 10 E.g. 1.b. per Perning. 17 E.3.40. per b Auferat oblivios utcunque filen. tium tegat.

And whereas heretofoze some, not without scandall, have divided this Kingdome into the Englich Pale, and the wilde Brith, blet oblition bury it, og filence cober it, for now all are reduced to obedience and civil behaviour. So as a man Stone &c. may justly fay of them as of the old Battaines, Sunt in bello fortes, & in pace fideles. And for that some have given out that the Crowne of England had this houelif non, Country of Ireland of the donation of the pope, - we will ingenuously manifest the truth therein by the Records and writings themselves at large.

Altitonantis Dei largiflua clementia, qui est Rex Regum, & Dominus do. The Charter of minantium, ego Edgarus Anglorum Basileus, omniumque rerum Insularum King Edgar made Ann. Dom. Oceani que Britanniam circumjacent, cunctarumque Nationum que infra 964 and in the eam includuntur Imperator & Dominus, gratias ago ipsi Deo Omnipotenti 6.0f his reigne. Regi meo, qui meum imperium sic ampliavit & exaltavit super regnum patrum meorum. Qui licet Monarchiam totius Anglia adepti sunt a tempore King Athelane Athelstani, qui primus Regum Anglorum omnes Nationes que Britanniam to a Monarchy. incolunt sibi armis subegit, nullus tamen corum ultra fines imperium suum dilatare aggressus est. Mihi tamen concessit propitia divinitas cum Anglorum imperio omnia regna Insularum Oceani cum suis ferocismis Regibus usque King Edgar con-Norvegiam maximamque partem Hibernia, cum sua nobilisima Civitate de quered the gran Dublina Anglorum regno subjugare, quosetiam omnes meis imperiis colla sub- land, with the dere, Dei favente gratia, coegi. Quapropter & ego Christigloriam & laudem moft noble City in regno meo exaltare, & ejus servitium amplificare devotus disposui. Et per of Dublin. Note the piery of meos fideles fautores, Dunstanum, Viz. Archiepiscopum Ayelyolanum ac Of-this King. waldum Archiepiscopos, quos mihi patres spirituales & consiliatores elegi, Inc. leges Edw: magna ex parte disposui, &c. Facta sunt has Anno Domini 964. Indictione foris fo. 137.6. 8. Regni vero Edgari Anglorum Regis 6. in regia urbe qua ab incolis Ocle- Lamb. ayeceastria nominatur in natale Domini festivitate Sanctorum Innocentium Arthurus qui feria 4. &c. H Ego Edgar Basilens Anglorum, & Imperator Regum clytistimus Rex gentium, cum consensu & Principum & Archiepiscoporum meorum hanc Britannorum, &c meam manuscentiam signo meo corroboravi. H Ego Alfrye Regina consensi strenuc sinter & signo Crucis confirmavi. Ego Dunstan Archiepiscopus Dorobor Ecclesia alia) Hiberniana Christi consensi & subscrips & Ego Osticel Archiepiscopus Eboracensis Ec-

elesia consensi & subscripsi. Ego Alferic Dux. Ego Buthnod Dux. Ego Aridgari Dux

And what Ecclefiafticall jurisolation the Archbifhop of Canterbury bad in Ireland of ancient time before it was labjed to the Crowne of England, pour may reade in Camdens Britannia, pag. 735. & 765. as namely in the Confecration and Confirmation of their Bithops, by reason of his Patmacy in Ireland.

Mich. E. z.coram Rege Rot.43. Hibernia.

Of the Pentar-

shy of Ireland.

A Inflice in Ireland conftituted by Letters Patents under the great Seale of England, carnot be remobed from his office but by the king only.

Kerry. Kilkenny. Defmond. Caterlough. Corke. South. Queenes County. Waterford. East. The Kingdome of Kings County. Limricke. Mononia had 7. Lagenia 7. viz. Kildare. Tipperay, Counties, viz. Washford. with the County of St Crof-Dublyn. les Tipperay. r East Meth. The middeft. West Meth. Media 3. Longford. Louth. Cad. Towmond. Monaghaia. Galloway. North. West. Domagh. Mino. Vltonia had 10. Conacha had 6. Slego. Doun. Counties, viz. Le Trim. Antrim. Rostaman. Colran. Tiroen. Tirconel or Doneal

Ireland hath 33. Counties, belides Cities, that are Counties of themselves. Bing H.2. at a Partiament holden at Drfogd, Anno regni fui 23. created bis fonne John Bing of Freland. But the fucceeding Bings waste themselves Domini Hibernia, untill the 33, yeare of H. 8, in which yeare he took upon him the name of It ing of Breland.

It was enaced by Authority of Parliament, that every man during fir years might dig in his owne proper fople in Breland Gold or Sitter, ac. peelding to the King the ninth part thereof, and that they make Plate or Copne thereof at the Hings Copnage in Dublin, paying the fees : and that none carry thereout Brackli, 2 fo. 222 any of the faid Golo, Silver of Bullion, but into England, without the Kings licence, on paine to lofe the fame.

A grant of all Pines of Gold and Silver within England, rc. to the Duke of Bedford Regent of France, tc. rendring to the Church the tenth part : to the Ling the fifteenth part : to the owner of the fople the twentieth part.

To conclude with fomeluhat which fends to the honour of that Boble Bation. Certaine it is, that whiles the Liberall Sciences in Europe lay in a manner buried in darknesse, then did their lustre thine forth most clearly here in Ireland; thither did our English Sarons repayse, as to a Fayse of Market of good Letters:

Rot.pail.3 R.z. nu.43.in Eng. Mines of Gold and silver. Fleta lib.4.fo. 119. Pl. Com. in the case of Mines. Coynage at Dublin. *Rot.pat. 5 H. 6. 1.pars.

Letters: whence of the holy men of those times we often reade in ancient Waris fers, Amandatus eft ad disciplinam in Hiberniam : be was fent into Breland to Camden in Hi-

Audy there.

The that is belirous to reade more Records concerning this Bingdome of Treland, he may reade thefe Coram Rege in the laings Bench. Trin. 1 3 E.1. Rot. 36. 38. Hibernia, Mich. 17 E.t.rot. 31. 38. Hibernia. Hil. 19 E.t. rot. 68. Hibernia. Pasch. 19 E.t. rot. 69. Hibernia. Trin. 20 E. P. Rot. 40. Pasch. 34 E.I. Rot. 104. Mich, 5 E. 3, Rot. 40. & 46. Mich. 6. E. 3, Rot. 55, Hibernia.

berniz.

C Of the precedency of the great Officers, Nobility, and others of this Realme.

For of the precedency of the King himself & of other Kings, and supreme Princes, I take not upon me to write, but referre you to learned Camden, Lib. Annal. Anno Domini 1600. 42. Eliz. pag.

At the Common law, the Bing by his Prerogative royall might give fuch Pracederech bonour reputation, and placing to his Councillogs and other his subjects, as thould be feeming to his wifedome, which Perogative was fo declared by Act of Warliament.

By this Decrogative, Henrico Beanchamp concessit Rex Henricus Sextus,ut primus & pracipuus esset Anglia Comes, & hoc titulo uteretur; Henricus Pracomes totius Anglia & Comes Warwici , Vesta Infula regulum dixit; posteaque Ducem Warwici creavit, & concessit, ut haberet sedem in Parliamentis, & alibi proximam Duci Norf. & ante Ducem Buckinghamia.

The fame King created Edmond of Babbam to be Carl of Richmond, and granted him precedency before all other Carls. He also created Jafper of Bat: field Carl of Dembroke, and gabe him precedency before all other Carls nert to his brother the faid Edmond Carl of Richmond. But hereof thefe examples

mall fuffice.

king H.8. though Canding as much upon his Dzerogative as any of his Dzogenitors, pet finding how beratious it was to himfelf, and how distastfull to his ancient Bobility to have new raised begrees to have precedency of them, and finding that this kind of controverly for precedency was of that nature, that it had many partakers, fpent long time, and hindged the arduous, urgent and weighty affairs of the Parliament, was content-to bind and limit his Pzerogative by Acof Parliament concerning the precedency of his great Difficers, and of his Pobility. And first for the Lords Spirituall (who sit in Parliament on the the Bings right hand) amongst themselves.

1. The Archbishop of Canterbury. 2. The Archbishop of Posk on the fame form. 3. The Bithop of London. 4. The Bithop of Dureime. 5. The Bilhop of Winchester, and then all the other Bishops of both Provinces thall fit and be placed after their Ancienties, as before this Act was accustomed. But having regard to the Lords and noble Deers of the Realm, both the Archbiftons have place above all the great Officers and Pobility in Parliament, Councell and Commissions, saving in the Star chamber, the Lord Chancelog of Lord Reeper bath the precedency of them. But the other Bilhops have place above all the Barons of the Realm, because they hold their Bishoppicks of the King per Baroniam, but they give place to Alfcounts, Carls, Parquelles and Dukes.

pracundo inced . re. Qui p reellit, præcedere deber. Most ancient is most honorable Ariftor, 1 Mctaph.cap 3. 31 H.8.cap. 10.in the Preamble. a Rot. Par. 23H 6. Vid. Rot. Pat. 28 H 6 3 parte m.23. Precedency granted to R. tarl of Warw.

31 H 8.cap 10.

Nota, the Lord
Steward of England is not here
mentioned, becaufe it was intended that when
the use of him
should be necessary, he should
not endure longer then has vive.

i. the Kings
Grandchilde.
Note the degrees
within that Act.

The generall clause.

* The words negative were ad-ded to avoid all fcruple that the order for precedency fer down in this Parliament should not be altered by any non obstante. a Rot. Parl. Anno 3 H.6.in principio, & nu.10. b Ro.Par.27 H 6. nu.18. Vide Rot. Parl. 11 H.6.m.g.nu. 32,33.34,35.b. tween the Barl of Arundell and Mowbrey Earl of Norf. Rot.Par.3 H.6. in principio cited in the Earl Marfhals care. e Hol.Chron.pa. 620.10. Hall 143.&c. Anno 20 H.6. d Rot. Par. 6 H.6. nu.22,23,24.

Concerning the great Officers of the Realm. 1. The Lord Chancelot or Lord Reeper of the Great Seal. 2. The Lord Treasurer. 3. The Lord President of the Kings Councell. 4. The Lord Privy Seal, being of the de. gree of Barons of Parliament, of above, wall fit and be placed in Parliament on the bigher part of the form above all Dukes, except only firth as thall happen to be the Kings Son, the Kings Brother, the things Rephew, or the Kings Bro. thers of Sifters Sons. See an Ad made in 28 H.8. cap. 18. making it treafon for marying, ac. with any of the blood royall within certain degrees: but it is re-5. The Breat Chamberlain of England. 6. The Constable. 7. The Marchall. 8, The Lord Admirall. 9. The Lord Steward of the Bings house. 10. The Kings Chamberlain thall fit and be placed after the Lord Writer Seal in manner and form following, viz. every of them thall fit and be placed above all other Parlonages being of the fame fate and Degree : as if he be a Faron, abobe all Barons: if a Alfcount, above all Alfcounts: if an Carl, above all Carls, sc. 11. The Bings principall Secretary being a Baron of the Parliament thall fit above all Earons not having any of the offices afozefaid. But if he bea Wife count, an Carl,oz any other higher degree , he Chall not take the place of any Uifcount, Carl, or higher begree, as it was refolved in the case of Robert Cecil, Carl of Salisbury. And if the Secretary be a Bithop, he thall take the place of all other Bifhops not having any of the offices afozefaid, but not above the Archbifhops.

All other Dukes not before mentioned, Parquelles, Carls, Aifcounts and Barons, not babing any of the offices aforefait, thall fit and be placed after their

Ancientie, as hath been acccuftomed.

and other Dukes, &c. If the King Chould create a Duke to the effate of Archouke, yet by force of these words he shall not take place of any Duke that was his Ancient, Et sie de similibus: other wise this statute might be made of

no force; and an Archbuke is fome other Duke.

Franp person being Lozd Chanceloz, Lozd Reeper, Lozd Arcasurer, Lozd Bzesident, Lozd Bzivy Seal, or Chief Secretary, shall be under the degree of a Baron of Parliament, they shall in Parliaments sit in the uppermost part of the Sacks in the middest of the Parliament Chamber, sc. But in the Starchamber, and all other Assemblies and conferences of Councell, they shall sit and be placed as is above rehearsed; and in 'no other place. Lastly, the Lozd Chanceloz, Lozd Reeper, Lozd Arcasurer, Lozd Pzesident, Lozd Bzivy Seal, being Lozds of Parliament: The great Chamberlain, the Constable, the Sparshall, the Lozd Admirall, the Lozd Steward, the Kings Chamberlain, and the kings Chief Secretary shall sit and be placed in such order and sastion as is above rebearsed, and not in any other place, by Authority of this Parliament. Vid. Statut, de 10 R.2, cap. 1.

a He that is desirous to understand the true Rules of Precedency of the Pobles of this Realm in the High Court of Parliament, it. let him reade the great case between John Garl Marshall and Richard Carl of Marwick, in Parliament, and the affirmations, answers, and replications on both parts erceding long, but full of notable rules, reasons, and presidents concerning Precedency, both in respect of the Blood-Royall, and otherwise: together with the Lines and Pedegrees, Seats, and Places of many Poblemen very delightfull to be

rean.

b Another between William Earl of Arundel, and Thomas Carl of Deron: wherein you hall reade notable matter concerning the Caule and Honour of Arundell, precedently adjudged by the Lords in Parliament in the reigne of H.4. between the Earl of Arundel and the Earl of Bent.

If a Bithop of this Realm be made a Tardinall, be thall not take any place of precedency in Partiament as Tardinall, but take his place in right of his Bithoprick, which he holdeth of the Ling per Baroniam, in respect whereof he atteth in Parliament.

d If a Duke og Carlite. Le made Protector of the Realm in Parliament, he Chall

thall have no other place but as a Duke of Carl, sc. Hereby you may perceive how necessary it was to set down by authority of Parliament in certainty the place a precedency that great Officers should have in Parliament, who sit not there in right of their Offices, but of their Poblity: And the names of dignities of the Poblity are parcell of their names, and so ought to be named in the kings Writs: but the Offices of Chancelor, Treasurer, and other Offices are not parcell of their names, and therefore in the kings Writs need not to be so named;

It is also enaced by authority of the laid Act of 31 H. 8. that in all trials of Ereasons by the Peers of this Realm, the said great Officers of this Land thall sit and be placed according to their Offices, above all other the Peers, as

is aforelaid.

We have peruled the Lift of the names of the Lords of Parliament litting in Parliament both of ancient and later time, wherein we can gather no certainty top precedency.

Thus far to: avoiding of contention about precedency in Parliaments, Star-Chamber, and all other Allemblics and Conferences of councell, and upon trials

by the Peers of the Realm was necessary.

Row he that descreth to know the places and precedency of the Poblity and Subjects of the Realm, as well men as women, and of their children: we for avoiding of tediousness will refer them to a Record of great authority in the reign of H. 7. (for we will not bouch Barch. Cassaneus or any other forein Author) intituled Series ordinum omnium procerum, magnatum, a nobilium, & aliorum quorumcunque infra hoc regnum tam virorum quam faminatum, posita & distincta per nobilissimum Jasparum Ducem Bedford & alios nobiles appunctuatione Domini Regis Henrici septimi: (but this Record dealeth not with the places of any of the great Officers) whereunto we will refer you: wherein you thall see what places both the Sons, * Wives, and Daughters, of Lords of Parliament, as Dukes, Parquestes, Earls, Associates, and Barons thall have, and of Banerets, Unights, Esquires, and Bentlemen, and of their Wives and Children thall have.

If any question be moved in Parliament so: priviledge or precedency of any Lord of Parliament, it is to be decided by the Lords of Parliament in the house of the Lords, as all priviledges, and other matter concerning the Lords bonse of Parliament are, as priviledges and other matters concerning the house of

Commons are by the house of Commons to be decided.

The determination of the places and precedencies of others doth belong to the Court of the Constable and Parshall, unless any question riseth upon the said Act of Parliament of 31 H. 8. so, that being part of the Law of the Realme (as all other Statutes be) is to be decided by Judges of the Common Law.

8 Nobilis est qui generis sui imagines proferre potest, h Flavia gens obscura

quidem & fine imaginibus.

Tota licet veteres exornent i undique Ceræ Atria, nobilitas fola est atque unica virtus.

Major est nobilicas quam virtus: virtus enim une nobilitate esse potest, nobilitas autem sine virtute esse non potest.

k Arma seu insignia gentilitia ex antiquo habuerunt loco imaginu. So as now the best discussing of antiquity of Bentry is per insignia.

____Armaque fixit

Virgill.

And by the Lawes of England as all the degrees of nobility and honour were derived from the Ling as the fountaine of honour: * so all the Lands in Eng-

a 7 H.6.fo.15. Vid.Rot. Parl. 15 E.3.nu.7. b This is put for an example, for it extendeth to all trials by Peeres, not only in case of treason, but in case of felony, milprision of treason and felony, and so ever fince this Statute hath it beene put in ufe. c Bart: Callana us in Caralogo gloriæ mundi d Series ordinum tempore H.7. e Vid. Camden Eliz pa.475 Which we have added the rather, for that the contention about precedency betweene persons of that fex is ever hery, furious, and sometime fatall. Vid. the Parliam. Rolls vbi fupra. f Vid. Rot . Parl. 31 M.6.nu. 27. See 3 H.6-nu. 10. betweene Mowbray Earle of Norf. and Beauchamp Earle of Wa.wick. Cicero. Plin.l.b.39. apud majores,&c. optime. b Tranquillus in Vefp. iJutenal. i. Cerez imagines, Cotte de Armes, A coat armour, thatis, a long coat over armour with his armes embroidered up.

See the 1.part of the Inflitutes, Sect. 1-&c. and in that first part in divers places many things concerning nobility and their creations, and of the gain-

on it.

ing and lofing thereof, &c.viz. Sect. 9 fo. 17.2.b. Sect. 1. fo. 9.b. Sect. 94. fo. 69.2.b. Sect. 111.f. 83 b. Sect. 241. fo. 197.2 Sect. 14.15. fo. 20.2. Sect. 137. fo 97.2. Sect. 201. f. 134 a. Sect. 648. fo. 344.2. &c.

land were originally derived from the Crowne of England, and are holden of the same mediately or immediately. See before in the Chapter of the high Court of Parliament.

As names make knowne fingular persons, so Armes diftinguish severall fa-

It is worthy of remembrance, and fit for example, that when Thomas Lord Cromwel by a flattering Berald was offered in the time of king H.8.to fetch his pedegree from the ancient Lord Cromwel, that he might beare his Coat, he ans fwered that he would weare a Coat of his own, left another mans Coat might be taken from him: unto whom the king as advanced by him gave this Coat, Quarterly indented per Feffe, Da and Aqure, foure I tons counterchanged : lohere the old Lord Cromwels Coat was Argent, a Chiefe Bules, a Bend A. gure. The faid Act of 31 H.8. ertendeth not to Archbithops and 15 thops, there: foze it is necessary to speak somewhat of them also. In ancient time they had great precedency, even before the brother of the bing, as it appeareth by the Parliament Roll of 18 E. 1, and many others, which continued untill it was altered by Dedinance in Parliament in the reigne of King H. 6. as it appeareth by a Roll of Parliament of that Kings reign, entred in the back of the Parliament Roll. The precedency in Parliament, and other places of Counsell at this day (whereunto we apme) is, the two Archbishops have the precedency of all the Lozds Tempozali; and every other Bilhop in respect of his Barony have place of all the Barons of the Realm, and under the estate of the Wiscount and other fuperioz dignities. The Bithops between themselves have this precedency. First, the Bilbop of London, and after him the Bilbop of Durelme, and then the Bis thon of TA inchester, and after him every Bishop as he is in seignizity. But to this day, in all Ads, Didinances, and Judgements, ac. of Parliament it is faid, the Lords Spirituall and Temporall.

Rot.pat. 9 Jacobi 8.part.nu.45. Baronets and others. The first creation of Baronets was in Anno 9 Iacobi Regis: what place and precedency these Baronets and divers others thall hold, you may reade Roc. par. 10 Iacobi Regis part, 10. m. 8.& Rot, par. Anno 14 Iacobi regis part, 2.m., 24.

To conclude this Chapter with the Code of Theodosius, &c. Ut dignicatum ordo servetur, si quis indebitum sibi locum usurpaverit, nulla se ignoratione desendat, sitque plane sacrilegii reus.

The



The Epilogue.

Hus have we by the great goodnesse of the Almighty brought this painfull Work, confifting of fuch, and fo many varieties and difficulties, concerning the Jurifdiction of fuch, and so many distinct Courts (above the number of 100.) to a conclusion: and in some few cases, where we have differed from others in opi-

nion, we have shewed the cause and beginning of these errors (as we take them:) for it is a fure Rule, Quod errores ad fua principia referre,eft refellere, to bring errors to their first, is to see their last. Wherein we have strengthened our opinion with our two great guides, Authority and Reason, and not trusted Abridgements, Polyanthea's, or taken any thing upon trust, but have searched the Fountaines themselves, alway holding this Rule, Quod satinsest petere fontes, quam sectaririvulos : And our defired end is, that all these high and honourable Tribunals, and other subordinate Courts and venerable Seats of Justice may prosper and flourish in distribution of Justice, which assuredly they shall doe, if they derive all their power and strength from their proper roots.

Whilest we were in hand with these foure Parts of the Institutes. we often having occasion to go into the City, and from thence into the Country, did in some fort envy the state of the honest Plowman, and other Mechanicks; for the one when he was at his work would merrily fing, and the Plowman whiftle some selfe-pleasing tune, and yet their work both proceeded and succeeded: But he that takes upon him to write, doth captivate all the faculties and powers both of his minde and body, and must be only intentive to that which he collecteth, without any expression of joy or cheerfulnesse, whilest he is in his work.

Throughout all this Treatise we have dealt cleerly and plainly concerning some pretended Courts, which either are no Courts warrantable by Law, as we conceive them, or which without warrant have incroached more jurisdiction then they ought. Qui non libere veritatem pronuntiat, proditor veritatis est. Wherein if any of our honourable friends shall take offence, our Apology shall be, Amicus Plato, amicus Socrates, sed magis amica Veritas. Having ever in memory that saying of the Kingly Prophet, Keepe innocency, and take heed to the thing that is Pfal. 37.38. right, and that will bring a man peace at the laft.

And you honourable and reverend Judges and Justices, that do or shall fit in the high Tribunals and Courts or Seats of Justice, as aforefaid, feare not to do right to all, and to deliver your opinions justly according to the Laws: for feare is nothing but a betraying of the fuccours that reason should afford. And if you shall sincerely execute ju-

flice xiliorum.

The Epilogue.

flice, be affured of three things: First, though some may maligne you, yet God will give you his bleffing. Secondly, that though thereby you may offend great men and Favourites, yet you shall have the favourable kindnesse of the Almighty, and be his Favourites. And lastly, that in fo doing, against all scandalous complaints and pragmaticall devices against you, God will defend you as with a shield: * For thou Lord wilt give a blesing unto the righteous, and with thy favourable kindnesse wilt

thou defend him, as with a shield.

And for that we have broken the Ice, and out of our owne industry and observation framed this high and honourable Building of the Jurisdiction of Courts, without the help or furtherance of any that hath written of this Argument before, I shall heartily defire the wife hearted and expert Builders (Justice being Architectonica Virtus) to amend both the method or uniformity, and the structure it selfe, wherein they shall finde either want of windowes, or sufficient lights, or other deficiency in the Architecture what soever. And we will conclude with the Aphorisme of that great Lawyer and Sage of the Law (which we have heard him often fay) Bleffed be the amending hand,

Deo gloria & gratia.

FINIS.

Pfals.12.

Ariftotie.

Edm: Plowden.

